

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. RDB 09-CR-560

LEWIS KEVIN LUCAS,

Defendant.

Day Two of the JURY TRIAL in the above
matter, held on Tuesday, July 20, 2010, commencing at 9:25 a.m.,
before the Honorable Richard D. Bennett, in the United States
Courthouse, 101 West Lombard Street, Baltimore, Maryland 21201.

APPEARANCES:

CLINTON JACOB FUCHS, Esq.,
JOHN WALTER SIPPEL, JR., Esq.,
Appearing on behalf of the Government,

KATHERINE TANG NEWBERGER, Esq.,
BRENDAN A. HURSON, Esq.,
Appearing on behalf of the Defendant.

Reported by:
Julie A. Wycoff, RPR
Official U.S. Court Reporter

1 (Proceedings commence in open court.)

2 THE COURT: Good morning. I understand we have a
3 matter to attend to before we bring the jury in; is that
4 correct?

5 MR. FUCHS: Yes, Your Honor, just briefly.

6 Officer Laronde is going to be back on the stand this
7 morning, and I suspect we'll be getting to the IAD issues that
8 we discussed in chambers.

9 THE COURT: Yes, in terms of the Internal Affairs
10 Division.

11 MR. FUCHS: Yes, Your Honor.

12 THE COURT: And as to the matters that I've reviewed,
13 the defendant was not permitted to -- defense counsel was not
14 permitted to see the files, but I reviewed the materials for any
15 discoverable information within the ambit of the Giglio case;
16 and I determined that there was essentially a -- I provided a
17 summary, essentially, to the defense counsel by my letter of
18 April the 21st.

19 I sent a letter to you with a copy to counsel,
20 essentially, that I had -- with respect to Officer Fabien
21 Laronde, I reviewed 25 Internal Investigation Division files
22 related to complaints made against Officer Laronde in the past
23 six years dating back to March of 2004. And I noted in my
24 letter, while most of these complaints have been dismissed for
25 lack of complainant cooperation, there was a sustained finding

1 of misconduct in the 2006 case, after Officer Laronde was found
2 to have been publicly intoxicated and using profanity in an
3 off-duty altercation with the employees of a local bar.
4 Furthermore, there were findings of neglect of duty in a 2004
5 case after he was found to have failed to submit a required
6 report to a supervisor; and, in a 2006 case, after he was found
7 to have failed to ensure the accuracy of a report authored by a
8 police officer under his supervision, and I provided that
9 information to defense counsel.

10 Is that the correct procedural posture of this matter
11 from the point of view of the Government?

12 MR. FUCHS: It is, Your Honor.

13 THE COURT: Ms. Newberger and Mr. Hurson, is that the
14 correct procedural posture of the matter you're now here under?

15 MS. NEWBERGER: It is, Your Honor.

16 THE COURT: Yes, Mr. Fuchs?

17 MR. FUCHS: Your Honor, the only question I had was to
18 the extent within which we were going to be able to delve into
19 this issue.

20 I plan on asking Officer Laronde about essentially
21 what you provided, that summary. Beyond that, though,
22 specifically, the number of allegations, the other allegations
23 that were not sustained, I don't believe they're relevant, I
24 don't believe they're Giglio. I didn't know what the Court's
25 position was on whether or not --

1 THE COURT: To the extent that I have noted this
2 information to defense counsel, defense counsel is permitted to
3 pursue on cross-examination any information that I've provided
4 to it.

5 MR. FUCHS: I understand. Thank you.

6 THE COURT: To them, rather. So that's the way it is.
7 You're certainly free to raise it on direct examination, if you
8 want, and defense counsel can pursue it as well --

9 MR. FUCHS: Thank you, Your Honor.

10 THE COURT: -- on cross-examination.

11 MR. FUCHS: Your Honor, if I may, just one other brief
12 question.

13 Because Officer Laronde, based on my interactions with
14 him, has never seen his IAD file, and his recollection of these
15 is what it would be having not reviewed the file, having not the
16 paperwork, I was going to ask the Court if it would be
17 permissible if I lead Officer Laronde just when talking about
18 those three sustained issues.

19 THE COURT: I think that's probably fine. You can do
20 that.

21 Anything further on this, Mr. Fuchs?

22 MR. FUCHS: No, Your Honor.

23 THE COURT: Anything further from the point of view of
24 the Government on any matters before we bring the jury back in?
25 Anything further before we bring the jury back in from the point

1 of view of the Government?

2 MR. FUCHS: No, Your Honor. I'm sorry.

3 THE COURT: Ms. Newberger?

4 MS. NEWBERGER: Two very, very brief issues, Your
5 Honor.

6 THE COURT: Hold on one second.

7 (Pause.)

8 Go ahead. I'm sorry, Ms. Newberger.

9 MS. NEWBERGER: Two things, Your Honor, just so that
10 we don't have to deal with this later on in the day.

11 The first, I was hoping that you could just direct the
12 jury -- Agent Kerwin in his testimony yesterday identified
13 himself as working for a high-intensity drug task force.

14 THE COURT: Yes.

15 MS. NEWBERGER: And when Mr. Hurson asked him whether
16 this case involved any drugs, he said, I don't know the facts of
17 the case. I discussed it with Mr. Fuchs and Mr. Sippel, and
18 they are fine with the Court advising the jury that, despite the
19 unit that Agent Kerwin is in, this case does not involve any
20 narcotics.

21 THE COURT: All right. That's fine. I will indicate
22 that to the jury when they come back in first thing this
23 morning.

24 MS. NEWBERGER: Thank you.

25 And the one other thing that I anticipate, probably

1 pretty early into this morning, the Government will read into
2 the record the stipulations that the parties have reached.

3 THE COURT: Yes.

4 MS. NEWBERGER: One of the stipulations is regarding
5 Mr. Lucas' prior record, and the language of the stipulation
6 mirrors the statute. And the one thing that the parties agree
7 that the Court could explain to the jury is that, while the
8 prior conviction has to be one for which the possible penalty is
9 a year or more, that the -- that you explain to the jury that,
10 for that prior conviction to qualify, it doesn't mean that
11 Mr. Lucas actually received a sentence of more than a year.

12 THE COURT: Did he receive a sentence, Ms. Newberger?

13 MS. NEWBERGER: Your Honor, he has two convictions,
14 and I believe one of the convictions -- some of his sentences
15 were not for over a year.

16 THE COURT: Has he previously served over a year in
17 prison for any of these prior convictions? I have no idea what
18 his criminal record is.

19 MS. NEWBERGER: I think he has for one.

20 THE COURT: Well, then that would be inaccurate, I
21 think, to imply otherwise. The simple fact is, there is no
22 reason to go there. I will just indicate to the jury they're
23 not in any way to worry what the prior conviction was for.
24 We're not going to refer to more than one conviction.

25 We'll just note that it's agreed that there is a prior

1 conviction, the punishment for which was imprisonment for more
2 than one year, by statute -- I'll indicate it's by statute --
3 that that is a prior conviction. It's an element of the offense
4 that they should not consider in any way what the prior
5 conviction was for. It's just an element of the offense, and
6 it's agreed that there was a prior conviction.

7 MS. NEWBERGER: Sure, Your Honor. I think that our
8 point is only that, to satisfy that element of the offense, it's
9 only necessary that the possible punishment was more than a
10 year.

11 THE COURT: Yes, and that's all I'm going to say, is
12 that the possible punishment is more than a year. I'm not going
13 to suggest and make language to suggest that he didn't receive
14 incarceration. That would be an inaccurate representation.
15 We're sort of going off -- going on a tangent a little bit. I'm
16 not going to permit the Government to go into it, but nor am I
17 going to somehow imply that he didn't serve any time in prison.
18 That wouldn't be accurate.

19 MS. NEWBERGER: And I'm not asking that, Your Honor.
20 I'm not reading -- part of the problem is, I'm not reading from
21 the exact language of the stipulation, and the language of the
22 stipulation uses highly-legal language, and I just think the
23 more understandable way of expressing it is that the possible
24 penalty is a year or more.

25 THE COURT: All right. That's fine. Yes, I will be

1 glad to do that.

2 So we have those three items. I'll deal with the --
3 I'll deal with the matter of no involvement of narcotics as soon
4 as the jury comes in, just from the testimony yesterday of a
5 witness; and then we'll continue with Officer Laronde. You're
6 not going to introduce the stipulation yet on the prior
7 conviction.

8 MR. FUCHS: No, Your Honor. We'll wait.

9 THE COURT: When the time comes, just remind me,
10 Ms. Newberger. I am sure I'll remember, but I will be glad to
11 go ahead and do that.

12 MS. NEWBERGER: Thank you, Your Honor.

13 THE COURT: And then I'll have a draft of instructions
14 for us to go over, once we reach that stage.

15 We have Officer Laronde, and then one other witness
16 for the Government.

17 MR. FUCHS: That's correct, Your Honor.

18 THE COURT: Correct. And is it anticipated that there
19 are going to be any witnesses for the defense, Ms. Newberger?

20 MS. NEWBERGER: No, it's not.

21 THE COURT: Would you want me to go over the
22 defendant's right -- why don't we bring the jury in? We can do
23 this later.

24 I will go over with you, Mr. Lucas, your rights with
25 respect to testifying or not testifying. I gather you've

1 discussed this with your lawyers; correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I'll go over it with you in more detail
4 later this morning, to make sure I'm confident that you
5 understand your rights in that regard.

6 So with that, we'll bring the jury in, counsel.

7 Thank you, Mr. Thompson.

8 (Pause.)

9 (Jury present.)

10 DEPUTY CLERK: Jurors all present.

11 THE COURT: Good morning everyone and sorry to keep
12 you waiting. Sometimes we can attend to things out of the
13 presence of the jury, so you don't have to listen to that
14 white-noise machine, but it does mean you have to stay back in
15 the room a little longer.

16 But, for example, there will be a stipulation later
17 this morning that I think shortens matters a little bit. And
18 it's really not a matter in dispute, but sometimes these things
19 have to be worked out.

20 So with that, we're ready to continue. Officer
21 Laronde can return to the witness stand.

22 MR. FUCHS: Thank you, Your Honor.

23 MS. NEWBERGER: Your Honor, I think we had discussed
24 that you were going to mention --

25 THE COURT: Yes. Certainly, yes. One second. Just

1 bring him back in.

2 Good morning, Ms. Engert. How are you? Nice to see
3 you.

4 MS. ENGERT: Good morning, Your Honor. Nice to see
5 you.

6 THE COURT: One of Ms. Newberger's and Mr. Hurson's
7 colleagues is here in the courtroom, so I'm just saying hello to
8 her.

9 While we're waiting, ladies and gentlemen -- I'll do
10 this now, then -- yesterday there was a witness, Special Agent
11 Kerwin, who testified as an expert with respect to firearms --
12 the firearm crossing state lines and gave his opinion. In the
13 process of his testimony, he mentioned that he was with the
14 high-intensity drug-trafficking section. And he -- in response
15 to a question, he indicated he had no knowledge about whether
16 drugs were involved in this case or not.

17 Drugs are not involved in this case. The Government
18 agrees Mr. Lucas is not charged with any matter having to do
19 with drugs. The fact that Special Agent Kerwin is assigned to
20 the high-intensity drug-trafficking unit has nothing to do with
21 this case. That just happens to be his assignment. So there is
22 no question in the case about that, and there's no allegation as
23 to Mr. Lucas as to drugs.

24 Is that a sufficient explanation, Ms. Newberger?

25 MS. NEWBERGER: Thank you, Your Honor.

1 THE COURT: Thank you very much.

2 Officer Laronde, if you'll come forward, please, sir.
3 You're still under oath.

4 Thank you very much, sir.

5 (FABIEN LARONDE, Government witness, having been
6 previously duly sworn, resumed the witness stand.)

7 MR. FUCHS: Permission to proceed?

8 THE COURT: Yes, Mr. Fuchs.

9 MR. FUCHS: Thank you, sir.

10 CONTINUED DIRECT EXAMINATION

11 BY MR. FUCHS:

12 Q Officer Laronde, we spoke yesterday about your recovery of
13 that pistol on July 6 of 2009. I'd like to switch gears and
14 talk about your career on the police force.

15 If you would, tell the jury how long you've been a
16 police officer.

17 A Over eight years.

18 Q And in those eight years, where were you assigned?

19 A I've been assigned at the Southwest the entire time.

20 Q How many arrests have you made in the Southwest District?

21 A Thousands of arrests.

22 Q Over your eight years, thousands of arrests?

23 A Yes.

24 Q And how many gun arrests do you think you've made?

25 A Between 20 and 30.

1 Q In your eight years in the Southwest, have you ever
2 received complaints from citizens about your conduct?

3 A Yes.

4 Q What was the nature of some of those complaints, just
5 briefly?

6 A Use of force, discourtesy.

7 Q How hard is it to file a complaint with the police
8 department?

9 A You just have to call a number, and it's filed.

10 Q Okay. In your eight years with the police department, have
11 you ever been reprimanded by the department?

12 A Yes.

13 Q Were you reprimanded a few years ago, when you failed to
14 properly review a report, a statement of probable cause written
15 by another police officer?

16 A Yes.

17 Q If you would, just briefly explain what happened.

18 A There was an incident where we approached several guys that
19 were selling drugs. My partner called out to them. We ended up
20 approaching, making an arrest of -- I think it was about five
21 people, and it was two of us. We called for extra units. There
22 were drugs involved as well as guns. There was a gun outside
23 and a gun inside of the home.

24 Once units arrived, we placed everyone under arrest,
25 and then we were transporting them. What you have to do is, you

1 have to take each person, write their name down, and put them in
2 the wagon so they can get, I guess, processed or taken to
3 central booking, or whatever.

4 Before they go in the wagon, each guy is searched.
5 One of the guys -- it was myself and my partner and the wagon
6 guy, the guy that was driving the wagon. One of those guys had
7 a gun down his pants. So that gun was recovered at the scene by
8 the wagon guy and given to my partner. In the report, she wrote
9 that she recovered the gun.

10 Q This is your partner you're speaking about; right?

11 A Yes.

12 Q Okay.

13 A And I ended up signing that report, when -- what happened
14 was, when we went there, the wagon guy actually took the gun out
15 of the guy's pants and ended up giving it to her, and she just
16 stated that she recovered it. So it was -- I mean, it was a
17 mistake on my part, because I didn't thoroughly read it and say,
18 Hey, listen, the wagon guy took it out of his pants, not you. I
19 signed that report, and I got in trouble for that.

20 Q To be clear, you didn't write the report; is that correct?

21 A No, I didn't.

22 Q But you were the senior person on the scene; is that
23 correct?

24 A Right. And I reviewed the report, all the necessary things
25 were in it -- the suspect's name, the guns that were recovered,

1 all the drugs that were recovered, the money that was recovered.
2 I just didn't actually read the report for content. I just put
3 it -- kind of scanned everything, made sure everything was in
4 there correct, and signed it.

5 Q And, as a result of that mistake, what did the police
6 department do?

7 A I was issued a -- kind of just a -- either verbal
8 reprimand, or they put a letter in my jacket.

9 Q Were you demoted?

10 A No.

11 Q Were you fired?

12 A No.

13 Q Were you suspended?

14 A No.

15 Q Were you transferred out of the Southwest?

16 A No.

17 Q Did you lose pay, or anything like that?

18 A No.

19 Q Okay. Did you also get reprimanded by the police
20 department for failing to write a juvenile custody report and an
21 incident report a few years ago?

22 A Yes.

23 Q And, if you would, just briefly explain what happened.

24 A We made an arrest of a juvenile in an open-air drug market.
25 I'm not exactly sure of the particulars, but we transported that

1 juvenile back to the Southwest District.

2 Upon interviewing the juvenile, we made the
3 determination we were going to release him. The juvenile didn't
4 want to be released in the area that he was locked up, because
5 people would think that he snitched. In fact, he did snitch.
6 So we couldn't really put him back there. He told us where he
7 wanted to be released, and we took him to that spot, and he was
8 released.

9 Q Did he tell you why he wanted to be released in that
10 particular area?

11 A He had family in that area. He was supposed to get out of
12 our car and go into -- I think it was his grandmother's house,
13 or something like that.

14 Q Okay. What happened next?

15 A He ended up getting into an altercation, and we ended up
16 getting in trouble for releasing him -- not releasing him in the
17 area, for not writing the juvenile custody report.

18 Q And what was the punishment for that?

19 A That was also a reprimand, but it was also -- it was my
20 partner's case that, you know, she locked up the juvenile, and
21 she never wrote the report, but we were both in the car.

22 Q Okay. Because of this, were you demoted?

23 A No.

24 Q Okay. Were you suspended?

25 A No.

1 Q Were you transferred out of the Southwest?

2 A Nothing.

3 Q Did you lose pay, or anything like that?

4 A No.

5 Q All right. And, finally -- and, I'm sorry, this may be
6 embarrassing -- did you receive a reprimand for getting in a bar
7 fight a few years ago?

8 A Yes.

9 Q If you would, again, briefly explain what happened.

10 A I was in a bar and -- it was a Christmas party.

11 Q And I'm sorry. Were you on duty or off duty?

12 A Off duty. I got into an altercation with -- it was over
13 what I was wearing in a bar. One of the bouncers approached me,
14 and it turned out I was wearing a hat from a bar across the
15 street, and he didn't like that. He thought that I was -- I
16 guess I was disrespecting his bar or something. I don't even
17 really know what the deal was.

18 But he didn't like the hat. He approached me in a way
19 that was kind of aggressive, and I had been drinking, and I
20 didn't like the fact that he did it, so I let him know about it.

21 Q As a result of that reprimand, what happened?

22 A We didn't get into a fight. I just actually ended up being
23 choked out, but I got in trouble for cursing at the guy pretty
24 much.

25 Q And, as a result of that, what did the police department

1 do?

2 A I got a letter. It was a letter of reprimand or a verbal
3 warning.

4 Q Okay. Again, same questions. Were you demoted as a
5 result?

6 A No.

7 Q Were you transferred out of the Southwest?

8 A No.

9 Q Were you suspended?

10 A No.

11 Q Lose any pay or rank?

12 A No.

13 MR. FUCHS: No further questions, Your Honor.

14 THE COURT: Thank you, Mr. Fuchs.

15 Ms. Newberger, cross-examination?

16 MS. NEWBERGER: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. NEWBERGER:

19 Q You've been a police officer for eight years?

20 A Yes, ma'am.

21 Q For how long have you and Officer Huter -- Huter -- excuse
22 me -- been partners?

23 A It's been over a year. Probably going on about two years.

24 Q All right. And you both serve in the Southwestern District
25 Operations?

1 A Yes.

2 Q Is that also referred to as the Southwest Flex Squad?

3 A It's an operations squad. It's been called flex in the
4 past.

5 Q Okay. And the idea is that you can be assigned to hot
6 spots or where there's need; correct?

7 A Correct.

8 Q And so you -- I believe you testified yesterday that, on
9 July 6 of 2009, you were assigned to patrol the Wilkens and
10 Brunswick area because there had been a shooting recently?

11 A Correct.

12 Q And is it even possibly the case that you hadn't originally
13 been scheduled to work that day, but were called in because of
14 this increase in violence?

15 A It was something along those lines. We normally don't work
16 on Sundays, and they assigned, like, myself and Officer Huter to
17 work that particular Sunday. They rotated throughout all the
18 operations.

19 Q Okay. And so they called you in because they were looking
20 for the shooting suspect?

21 A Not for the shooting suspect. We were just assigned to be
22 present in that area and make arrests or just be present.

23 Q Okay. So there's more eyes in the area?

24 A Correct.

25 Q And at 2:00 a.m., you were at the end of your shift?

1 A Yes.

2 Q And you were going back to the Southwest District; correct?

3 A Correct.

4 Q And at that point you are the one who first noticed

5 Mr. Lucas?

6 A Yes.

7 Q And he was on the porch?

8 A He was walking up to -- up the porch when I first saw him.

9 Q Okay. So he was walking up the porch. So it's fair to say
10 that his back was facing you?

11 A His back was to me, but I was coming from his left, so I
12 could see the side of his face as he was walking up.

13 Q All right. Now, just so that we're all clear, you know
14 today that Mr. Lucas is not the person who was suspected of the
15 shooting; correct?

16 A Correct.

17 Q And so he was not actually the person who you were looking
18 for?

19 A Correct.

20 Q But at the time, on July 6, when you made that U-turn, you
21 thought he might be that suspect?

22 A We had a flyer that we had constantly been looking at, the
23 flyer, and he resembled him.

24 Q Right. Both had dreadlocks?

25 A Dreadlocks, his body size, body shape.

1 Q Okay. Now, you were furnished a photograph of the suspect?

2 A Yes, ma'am.

3 Q And that's a lookout sheet?

4 A I'm not -- I don't exactly remember what it was. Sometimes

5 they're saying they're wanted, and sometimes it just says

6 they're wanted for questioning. It's just a picture with basic

7 information about the case.

8 Q Okay. And then basic information about the person you're

9 looking for; correct -- like date of birth, height, weight?

10 A Yes.

11 Q Okay. Do you recall what the date of birth, height and

12 weight of the person you were looking for was?

13 A No.

14 Q Would the lookout sheet refresh your recollection?

15 A Yes.

16 MS. NEWBERGER: May I approach, Your Honor?

17 THE COURT: Yes, certainly.

18 BY MS. NEWBERGER:

19 Q I'm going to show you what's been previously marked as

20 Defendant's Exhibit 9. Does that refresh your recollection?

21 A Yes, ma'am.

22 Q How old was the person that you were looking for on

23 July 9th of 2009 -- excuse me -- July 6th of 2009?

24 A Eighteen.

25 Q What was his date of birth?

1 A 4-19-92.

2 Q So he might have actually been 17 at the time?

3 A Seventeen; yes, ma'am.

4 Q And how much did he weigh?

5 A A hundred forty pounds.

6 Q Okay. And 5-6; is that correct?

7 A Yes, ma'am.

8 Q It's a pretty small guy?

9 A From what -- I guess. And now you're saying that, yeah,
10 but I -- just the way the picture looked and the defendant
11 looked at the time. I had the picture. I wasn't looking at
12 height and weight.

13 Q All right. Now, when you made that U-turn, it was Officer
14 Huter who got out of the car to investigate?

15 A Yes, ma'am.

16 Q And you were in an unmarked vehicle; correct?

17 A It was unmarked, but we have lights and sirens inside the
18 car.

19 Q Inside the car?

20 A Yes.

21 Q But you didn't have lights or sirens on at the time?

22 A When I -- when we first pulled around, I didn't have them
23 on, no.

24 Q All right. And so you stayed inside the vehicle?

25 A Yes, ma'am.

1 Q And you testified yesterday that, when Officer Huter got
2 out of the car, you could hear him say something along the lines
3 of, Can I talk to you for a second?

4 A Yes.

5 Q All right. Now, you also described a skipping motion?

6 A Correct.

7 Q And all this is happening very, very quickly; correct?

8 A Less than a minute. Everything just -- it was one -- I
9 mean, we're breaking it down really slow, but it all happens in
10 seconds.

11 Q And when you -- when Mr. Lucas started running and Officer
12 Huter ran off after him, you remained in the car?

13 A Yes.

14 Q You didn't get out?

15 A No.

16 Q And when you saw -- you testified yesterday that you saw
17 what you believed was Mr. Lucas grabbing towards his waist area;
18 is that correct?

19 A Yes.

20 Q At that point you didn't get out of the car either?

21 A No.

22 Q So you stay in the car, and you start driving along
23 Wilkens?

24 A Yes, ma'am.

25 Q And then you turn right onto Brunswick?

1 A Correct.

2 Q And at this point you're trying to stay parallel to Officer
3 Huter?

4 A I mean, I was trying to -- if I had an opportunity, I would
5 have tried to cut him off, but we were trying to catch the
6 defendant.

7 Q And I think what you were explaining yesterday was, there
8 were cars parked along Brunswick; isn't that correct?

9 A Yes.

10 Q So you would try to get close to the curb, but then you
11 have to veer back out into the street to avoid hitting a parked
12 car?

13 A Yes.

14 Q All right. Had to do that a few times?

15 A I think it was once. I mean, it's so short of a distance
16 that --

17 Q So this is really actually a pretty short distance on
18 Brunswick before this pathway that Mr. --

19 A It's a lengthy distance; but, when you're in a car and
20 running, it's not really that far.

21 Q All right. And when you were in the car and Officer Huter
22 is running down Brunswick, were you in radio communications with
23 him?

24 A At that time I had him in sight. I don't even think I had
25 a chance to get on the radio yet. I may have. Your adrenaline

1 is going, everything is happening so fast. I couldn't tell you
2 when I started talking on the radio.

3 Q Okay. But when Officer Huter chased Mr. Lucas down the
4 pathway, did you lose sight of him?

5 A Yes.

6 Q And I believe you said you then turned into the Ryder
7 parking lot?

8 A Yes, ma'am.

9 Q I'm going to show you what was previously marked as
10 Defendant's Exhibit Number 2.

11 So you pull down there, and you're in this area
12 parallel to the alleyway; correct?

13 A I think I may have even been a little further out .

14 Q Okay. And you got out of your car at that point?

15 A Yes.

16 Q And you're trying to look for any sign of where Officer
17 Huter is at this point?

18 A Well, originally, I went through there, not realizing it
19 was a parking lot. I was just trying to picture the path that
20 they were going to take, and I was trying to just cut them off.
21 But once I saw that it was fenced in, I kind of just
22 backtracked, and I got out, and I was on the radio and listening
23 to them.

24 Q Okay. And while you were in the parking lot, weren't you
25 approached by a security guard from the Ryder lot?

1 A Yes.

2 Q And he was saying you're not allowed to be here?

3 A He was saying something to me along -- I guess he didn't --
4 he didn't know what was going on. I mean, I had lights on in
5 the car. He came up yelling at me. I really didn't -- I just
6 told him, you know, I was a police officer, just give me a
7 minute, because I was concerned about my partner.

8 Q So, when he approached you at first, because it wasn't --
9 he didn't realize you were a police officer?

10 A I don't think -- I'm not sure if he just saw a car in the
11 parking lot. I don't know if he was coming over to help, or
12 what he was doing, but he was just going to interfere with what
13 I was doing, so I kind of didn't really pay him any mind.

14 Q And at this point, you put a call out to dispatch?

15 A At some point I definitely got on the radio. I just let
16 the dispatch know we had a possible armed person, or we had
17 somebody running from us, and I was just letting people know
18 where we were at.

19 Q Okay. And the idea being so that more officers could come
20 to the scene?

21 A Perhaps surround the area; correct.

22 Q And did more officers come to the scene?

23 A Yes.

24 Q Approximately how many?

25 A By the time everything was done, there were -- I would say

1 half the cars in the district were probably there. It was
2 probably -- there were a lot of cars there. I don't know
3 exactly how many, but there was a lot of police cars there.

4 Q All right. So, taking a step back, you said yesterday that
5 you at some point -- you aren't sure whether you heard his
6 voice, you saw a flashlight, but at some point you realized
7 where Officer Huter was; correct?

8 A Yes.

9 Q And so you drove back out of the Ryder lot?

10 A Yes.

11 Q And you parked your car right in front of that pathway?

12 A Correct.

13 Q And you came down the pathway?

14 A Yes.

15 Q Did you have your gun out?

16 A No.

17 Q You didn't have your gun out?

18 A No.

19 Q Did you have your flashlight out?

20 A Yes.

21 Q Now, at that point was -- where was Mr. Lucas?

22 A They were -- they went down to the alley and made a right,
23 and they were about as far down the alley as they could go,
24 because it was all overgrown. And they reached the point where
25 they had to stop, and that's why they were fighting, because

1 they had nowhere else to really go.

2 Q I'm going to show you what's been previously marked
3 Defendant's Exhibit 6. Do you recognize this as fair and
4 accurate?

5 A Not accurate at all. At that time -- this is a picture as
6 it is today. Like I said, someone came in -- someone moved in
7 and cleaned. You can see all this debris right here. This was
8 actually all the way up here, and this was all overgrown.
9 Everything here.

10 Q Okay.

11 A So there was no straight path to the street, and there was
12 just -- in that alley at night, you would think you had nowhere
13 else to go, because you couldn't go through that.

14 Q Okay. And it was around that location that you found
15 Officer Huter and Mr. Lucas?

16 A They were more over here.

17 Q And was Mr. Lucas cuffed at the time?

18 A When I approached, he was -- Huter was putting cuffs on
19 him. Officer Huter was putting cuffs on him. And then I
20 arrived, we stood him up, and he immediately started telling me
21 that he believed that he threw the weapon. He said, "Check over
22 there; he threw something; he threw a gun; he threw a gun."
23 Everything was very excited. It wasn't calm, you know, like we
24 were doing it now.

25 Q Okay. It was very excited. Your adrenaline was running?

1 A Yes, ma'am.

2 Q Blood pounding in your ears?

3 A Yes.

4 Q A little bit scared because you thought you were dealing
5 with a shooting suspect?

6 A Just scared because my partner was running. It was an
7 armed person. He was -- you know, anything could happen.

8 Q Okay. And so you really didn't know what to expect?

9 A Correct.

10 Q You didn't have time to think and reflect like you do right
11 now?

12 A Right.

13 Q This was quickly, quickly moving?

14 A (Nodding head.)

15 Q And it was really dark out there, wasn't it -- in that
16 alley?

17 A I mean, it wasn't completely dark. You didn't need your
18 flashlight to see, because -- it was an alley, but there were
19 also streetlights. And, like I said yesterday, there is a
20 commercial business right behind it that definitely illuminates
21 the area. I wouldn't be able to find the gun without my
22 flashlight, but I could see Huter -- I could see Officer Huter;
23 I could see the suspect; I could see their clothes, but, you
24 know, I --

25 Q But nothing as detailed as a weapon?

1 A Right. I wouldn't be able -- I'd have to really go
2 there -- it wouldn't make any sense to look in a dark place
3 without a flashlight.

4 Q Yeah, it's just too dark?

5 A Correct.

6 Q And it's full of junk; right?

7 A Yes.

8 Q Now, you pick up the firearm?

9 A Yes, ma'am.

10 Q All right. Now, at that point some of the uniformed
11 officers have started to arrive; isn't that correct?

12 A Correct.

13 Q Okay. Now, did you say to one of them, "Hey, can you call
14 the crime lab to come"?

15 A No. That's not really done. For a case like this, it's --
16 it's not really done. I mean --

17 Q Well, at that point didn't you believe that the person that
18 you had just caught might have been the person wanted in a
19 shooting?

20 A I mean, if he was wanted in a shooting -- he didn't commit
21 a shooting at the time, and it was -- it was -- we didn't
22 know -- I didn't know what he had just did, but he didn't fire
23 the gun, and we don't normally call the crime lab for something
24 like that.

25 Q You didn't normally call the crime lab, but you didn't try

1 to call the crime lab, did you?

2 A I never -- in all the gun arrests I've made, I've only done
3 it twice.

4 Q And you picked it up -- you picked up the gun with your
5 bare hands?

6 A Yes, ma'am.

7 Q You didn't get gloves?

8 A I did my best not to handle it. I didn't -- I handled it
9 in a way where, if there were prints on there, I wouldn't
10 destroy them.

11 Q Well, you secured the weapon; correct?

12 A Correct.

13 Q And then you took it out to your car, and you took -- you
14 emptied the magazine; right?

15 A Yes.

16 Q So you had to handle the gun to do that?

17 A You can handle it as -- I mean, you try not to touch the
18 major parts that -- I didn't have to just put my fingers all
19 over the gun. I handled it with my fingertips and just touched
20 it as little as possible.

21 Q Okay. But you didn't do it with gloves on?

22 A No, ma'am, I didn't have gloves on.

23 Q And Mr. Fuchs asked you yesterday about how you wouldn't
24 leave the gun sitting there with Mr. Lucas in the alleyway. Do
25 you remember that?

1 A Yes, ma'am.

2 Q Well, at that point weren't there other uniformed officers
3 at the scene?

4 A Yes.

5 Q Did you ask any of them, "Hey, can you stand here and watch
6 this, while I go to my car and get an evidence retrieval kit"?

7 A No. Like I said, in a case like this, we don't do that.

8 Q You don't do that. You didn't say --

9 A I've only done it two other times.

10 Q You didn't say, "Let me just grab a camera so I can take a
11 photograph of where we found this"?

12 A We didn't have -- we do that sometimes; but, in this
13 particular case, we didn't have a camera, and we just -- we
14 didn't do it.

15 Q Well, you're about two or three blocks at this point from
16 the Southwestern District; correct?

17 A Correct.

18 Q They have cameras at the Southwestern District, don't they?

19 A You'd be surprised.

20 Q And you said that a lot of uniformed officers had arrived;
21 right?

22 A Yes, ma'am.

23 Q So there was backup?

24 A Yes.

25 Q There were bodies to help you with the situation?

1 A I mean, there were officers there. It's not -- this isn't
2 a live crime scene. So these officers are all coming to make
3 sure we're okay, and then they all have their post to handle and
4 things to do. It's not like we're going to shut down. They
5 wouldn't shut down for a handgun arrest, like we had, of this
6 particular type.

7 Q Now, I want to be very, very clear. The first time you saw
8 the firearm was when you recovered it in that alleyway; correct?

9 A Yes, ma'am.

10 Q You hadn't seen Mr. Lucas with a firearm at any time?

11 A No.

12 Q And when you retrieved that firearm, you were the person
13 who put the evidence tag on it, did you say?

14 A Yes. I processed the gun to bring it to evidence.

15 Q Okay. And you turned it into evidence?

16 A Yes, ma'am.

17 Q There was nothing else that got turned in in this case;
18 correct?

19 A I don't believe so. I think just the weapon and the rounds
20 from the weapon. That was it.

21 Q No other contraband, nothing else?

22 A No.

23 Q You submitted it to evidence control for safekeeping;
24 correct?

25 A Yes, ma'am.

1 Q Did you first swab it for DNA samples?

2 A That's not something we do, either.

3 Q Did you request DNA testing?

4 A No.

5 Q So, to the best of your knowledge, no DNA testing would
6 have been done on this gun?

7 A I submitted it for -- just routine, like a routine firearms
8 check and for prints.

9 Q Now, Mr. Fuchs asked you about a couple of incidents in
10 which there were some problems with reports you had supervised;
11 is that correct?

12 A Yes, ma'am.

13 Q And in this case you were the senior officer as well,
14 weren't you?

15 A Yes.

16 Q And you were the person who was supervising or approving
17 the report written in this case by Officer Huter?

18 A Yes, ma'am.

19 Q And that means it was your job to proofread the report,
20 make sure that it was accurate?

21 A Yes, ma'am.

22 Q I'm going to show you what's previously been marked for
23 identification purposes only as Defendant's Exhibit 10. Do you
24 recognize that to be the report that Officer Huter wrote?

25 A Yes, ma'am.

1 Q And can you turn to the second page? Is that your
2 signature there?

3 A Yes.

4 Q And it's -- the copy may not be very good, but it -- you
5 have signed in the area for approving supervisor?

6 A Yes, ma'am.

7 Q Now, at the top of that report, what date and time does it
8 say that the incident occurred? I guess it's Box 4.

9 A It says 7-6-09 and zero -- at 1:55 in the morning.

10 Q All right. But in the text of the narrative section of the
11 report, what date does it say?

12 A 7 July '09, 2009, at 1:55 in the morning.

13 Q So which is it, July 6th or July 7th?

14 A It's probably going to be the -- I guess the 6th.

15 Q Well, the time that you would have had the best
16 recollection of which day it occurred was on the date this
17 report was written; correct?

18 A Correct.

19 Q But you signed this report?

20 A I can tell you why it happened. It was a mistake on both
21 of our parts, but we worked from 6:00 p.m. to 2:00 a.m. The
22 start of the shift started at 6:00 a.m., it ended at 2:00. So
23 it began on the 6th and ended on the 7th. The arrest -- I mean,
24 he just got confused and made a mistake just because it's --
25 technically, we're working on two separate dates.

1 Q Okay. I just want to be very, very clear. You just said
2 that you started working from 6:00 a.m. and worked to 2:00 a.m.?

3 A 6:00 p.m.

4 Q 6:00 p.m., okay.

5 A To 2:00 a.m.

6 Q All right. You didn't work an 18 -- however many hours
7 shift. That was an eight-hour shift that night.

8 A A mistake, again. Sorry.

9 Q But when you signed this report, you said that, "I affirm
10 and declare that the statements above are true to the best of my
11 knowledge," didn't you?

12 A Yes, ma'am.

13 Q But this was a mistake?

14 A Yes.

15 Q And you know from your eight years in the police department
16 how important accurate report writing is; correct?

17 A Yes, ma'am.

18 Q Because reports are relied upon by police officers; isn't
19 that right?

20 A Correct.

21 Q And by your supervisors?

22 A Right.

23 Q By prosecutors?

24 A Yes.

25 Q By defense attorneys?

1 A Yes, ma'am.

2 Q And, in fact, police officers, like yourself, often consult
3 the police reports before you come to testify; isn't that
4 correct?

5 A Yes.

6 Q Because oftentimes, like today, you're called to testify
7 more than a year after the event happened; isn't that right?

8 A Yes. And, I mean, to answer that, those things are
9 important, but what's important are the facts that are written
10 within it. The date does make a difference, but does that
11 mean -- you're talking about the same day it happened. I mean,
12 I would review this to really review the content to refresh my
13 memory, and, you know, the time that it happened and the actual
14 events that occurred.

15 Q Well, Officer Laronde, haven't you previously testified in
16 this case?

17 A Yes.

18 Q You came to this courtroom, and you testified back on
19 April 23rd of 2010?

20 A Yes, ma'am.

21 Q And at that time weren't you asked about the incident in
22 this case?

23 A Yes.

24 Q And didn't you in fact testify that this all occurred on
25 July 7th of 2009?

1 A I may have.

2 Q And that would have probably been because of the mistake in
3 the police report; correct?

4 A Correct. I mean, like I said, the date -- I review it for
5 content. If you would have just said it happened on the 7th or
6 the 6th, I would have agreed. If you said, isn't it true on
7 this date, I would have said, yes; and then I would have gone
8 into the actual content about what happened.

9 Q All right. But so you agree with me that, while it may be
10 a small mistake, it can have repercussions in testimony?

11 A I can see where you would make it a, you know, a problem,
12 but it's actually a very small oversight on my part or Officer
13 Huter's part.

14 Q Okay. So it's not so important to be accurate about
15 everything in the report?

16 A It is. It's very important to be accurate. But there are
17 some things that should weigh a little bit more.

18 Q Well, the date that an event happened, isn't that something
19 that's important?

20 MR. FUCHS: Objection, Your Honor.

21 THE COURT: Sustained.

22 BY MS. NEWBERGER:

23 Q You have had two situations in which you were reprimanded
24 for failing to supervise the accuracy of reports; correct?

25 A Correct.

1 Q Okay. So you discussed those with Mr. Fuchs, and you
2 discussed with him the method by which complaints can be filed.
3 You can call a hotline and a citizen can file a complaint;
4 correct?

5 A Yes, ma'am.

6 Q But the internal investigation division reviews those
7 complaints, don't they?

8 A Yes.

9 Q And the claims are investigated by the internal
10 investigation division, and they make a determination as to
11 whether the facts are sufficient to sustain the complaint; isn't
12 that right?

13 A Yes, ma'am.

14 Q So, when there is a sustained complaint, there is a
15 determination by the internal investigation division that there
16 are facts to show that the allegation actually did in fact
17 occur; correct?

18 A I guess so; correct.

19 Q That may have been a complicated question.

20 The bottom line is, a sustained -- a sustained
21 complaint means that it's not just that someone's called a
22 hotline, it means the police department has found that it
23 happened?

24 A Correct.

25 Q Now, are you aware that 25 internal investigation division

1 complaints have been filed against you?

2 MR. FUCHS: Objection, Your Honor. May we approach?

3 THE COURT: Yes.

4 (Conference held at the bench.)

5 MR. FUCHS: Your Honor, my only objection is to the
6 form of that question. She's making it sound as though the
7 internal affairs -- I'm sorry, Katherine -- the internal affairs
8 division has filed those complaints. They're not. They're
9 citizen complaints. The guy may or may not have --

10 THE COURT: Your objection is sustained. You may
11 rephrase the question.

12 MS. NEWBERGER: That's fine, Your Honor.

13 (End of bench conference.)

14 BY MS. NEWBERGER:

15 Q Officer Laronde, let me rephrase the question so I'm clear.

16 Are you aware that 25 complaints have been filed
17 against you?

18 A No.

19 Q You're not aware of how many complaints have been referred
20 to the internal investigation division against you?

21 A I've never, like, looked and seen how many. They don't
22 notify us of how many we have.

23 Q Okay. They notify you, though, when the complaints are
24 sustained; correct?

25 A Usually, if you have a complaint, you go down and make a

1 statement, and then they either sustain it or they don't sustain
2 it.

3 Q Okay. Mr. Fuchs discussed with you two incidents or three
4 incidents in which those complaints are sustained; correct?

5 A Yes, ma'am.

6 Q So let's talk about the first one, where -- I believe the
7 first one was where -- a neglect -- the first one was having
8 failed to ensure the accuracy of a report authored by a police
9 officer under your supervision; correct?

10 A Yes, ma'am.

11 Q And that is that there was a police report that was written
12 in which -- that you approved that stated that one officer
13 retrieved a weapon when actually it was a different officer.

14 A Correct. Like I said, there were circumstances to it, but
15 that's basically what happened.

16 Q Okay. So in that situation, you said you arrested five
17 people?

18 A Unlike -- like today, I got to review this case so I know
19 the facts in here. The cases you're talking about, I don't
20 remember -- I had to read them, but I read them four, five years
21 ago, so I don't know -- I'm not, you know, a hundred percent
22 positive on the facts of the cases you're talking about there.

23 Q But the bottom line is that that report did not accurately
24 say who found a piece of evidence?

25 A Right. Basically, she was standing right there. The

1 officer took it out of the guy's pants; and, instead of her
2 saying that the officer took it out of the guy's pants and
3 handed it to her, she said that she -- the way she worded it, it
4 was either, "It was recovered from his pants," or "I took it
5 from his pants." I don't exactly know.

6 Q But the internal investigation division determined that
7 that was not sufficiently accurate?

8 A The way she wrote it wasn't accurate; right.

9 Q And it was your responsibility as the approving supervisor
10 of that report to catch that inaccuracy?

11 A It was -- well, I -- I didn't catch it, either. She wrote
12 it, and I didn't read the exact report. I was there, so I
13 didn't -- I didn't think anything would have been different.

14 Q But in that situation you were the approving supervisor?

15 A Yes, ma'am.

16 Q Okay. So you should've read the report; correct -- to
17 determine whether it was accurate?

18 A Like I said, I did read it. I scanned it; but, at the same
19 time, what I scanned was, you know, the events happened. It was
20 a breakdown of the events. A gun was recovered from, you know,
21 from the guy's pants. I was there. That's what happened. But
22 I just didn't -- I didn't actually nitpick into it and, you
23 know -- it was an oversight on my part.

24 Q All right. So let's move on to the second incident that
25 you just described.

1 You and another officer arrested a juvenile?

2 A Actually, I was in the car. She arrested the juvenile.

3 Correct.

4 Q She arrested the juvenile; you were in the car with her?

5 A Yes.

6 Q And the two of you took this juvenile to the Southwestern
7 District?

8 A Yes, ma'am.

9 Q And you questioned him there?

10 A I didn't even have much to do with the questioning. I
11 mean, I was, you know, like I said, it wasn't my arrest. I
12 wasn't a part of it, so -- I was a part of it because I was in
13 the car.

14 Q You're part of it because you were in the car. And the
15 determination was made that there wasn't any reason to hold this
16 individual.

17 A It was more than that. The kid -- the juvenile gave up
18 information that was relevant to something else, and the
19 determination was made that we were going to release him.

20 Q Okay. But you released him to a different location than
21 where he had been arrested?

22 A Yes, ma'am.

23 Q And failed to file the report regarding that arrest and the
24 release?

25 A It was -- when you detain a juvenile, you're supposed to

1 write a juvenile custody saying that you had custody of the
2 juvenile at this date and this time, and that he was released at
3 this date and this time.

4 Q Okay. And that's a special form, because there are greater
5 protections for juveniles than for adults?

6 A Yes, ma'am.

7 Q And you didn't file that report?

8 A The report wasn't filed. Along those same lines, though,
9 it wasn't really my responsibility to do it. It was my
10 partner's. But because a report wasn't filed at all, we both
11 got -- well, I don't even know if my -- I know I got in trouble
12 for it, even though.

13 Q Because you were the superior in that situation?

14 A No. Actually, she was the superior.

15 Q She was the superior?

16 A She had a lot more years on than I did.

17 Q Okay. But you got in trouble for it?

18 A I think we both did. So, I mean, two people got in trouble
19 for not writing one report.

20 Q All right. Now, you've been sued at least twice for
21 falsely charging and falsely arresting people; correct?

22 A I remember --

23 MR. FUCHS: Objection, Your Honor.

24 THE COURT: Approach the bench, please.

25 (Conference held at the bench.)

1 THE COURT: Yes.

2 MR. FUCHS: Your Honor, I just don't know where this
3 is going. They weren't IAD complaints.

4 THE COURT: You were questioning this witness on two
5 lawsuits that you say were filed against him for false arrest.

6 MS. NEWBERGER: Mm-hmm.

7 THE COURT: And when were they filed?

8 MS. NEWBERGER: Your Honor, I believe it was in 2006
9 or 2007.

10 THE COURT: All right. Both of them were filed in
11 those two years. And what were the results of the lawsuits?

12 MS. NEWBERGER: Your Honor, that, I do not know, but
13 the --

14 THE COURT: What is the citation of the lawsuits,
15 where were they filed?

16 MS. NEWBERGER: In Baltimore City Circuit Court.

17 THE COURT: What is the status of the two cases?

18 MS. NEWBERGER: I unfortunately don't know, Your
19 Honor.

20 THE COURT: Well, obviously, if you know enough to ask
21 the question, why do you not know the status of the cases?

22 MS. NEWBERGER: Your Honor, I found out about this
23 because of a -- because he has been asked about this in previous
24 testimony in Baltimore City Circuit Court when he was testifying
25 as a government witness in a criminal matter. I have requested

1 several times the civil case, but I haven't actually received
2 it. So I don't -- I literally do not know what the result of
3 the lawsuit was.

4 THE COURT: Whether it was still pending or not?

5 MS. NEWBERGER: I do not.

6 THE COURT: Do you know how many people were sued in
7 the case?

8 MS. NEWBERGER: I believe it was just him. It may
9 have been one other -- one other.

10 THE COURT: It seems to me, Ms. Newberger, it's a
11 fairly simple matter of checking the index, the defendant index
12 of any court documents that you think where the lawsuit was
13 filed. The lawsuit is filed in a particular court. You check
14 the defendant index and find out what the status is.

15 So, I mean, the fact that you don't know where we're
16 going is troubling to me. I mean, you're certainly free to know
17 the disposition of the cases. So I am just troubled by throwing
18 this out without having --

19 MS. NEWBERGER: Well, here's --

20 THE COURT: -- nature of what the status of the case
21 is.

22 MS. NEWBERGER: Here's the issue, and it's not even
23 the outcome that I'm particularly concerned with, or whether he
24 was -- what the adjudication of that was. But he gave a
25 deposition in which he said under oath that, in that particular

1 situation, it was very much like this one, where he had heard
2 the report that there was two possible suspects in a shooting.
3 One was wearing a white T-shirt. He tried to pull over someone
4 who was wearing a white T-shirt. And, when he caught up with
5 them, he was not able to find any evidence of any wrongdoing,
6 but he arrested them anyway. And, ultimately, what he said was,
7 well, I didn't think he was going to be --

8 THE COURT: How is this --

9 MS. NEWBERGER: -- prosecuted.

10 THE COURT: Wait, wait.

11 The matter of arresting someone, whether he saw him
12 driving in the car or not, that's the facts of this case. This
13 case, as evidenced by Defendant's Exhibit 9, Government's
14 Exhibit 11, is the picture, I believe. Government's Exhibit 11
15 is the photograph of the suspect. If I'm not mistaken, it's
16 Government's Exhibit 11.

17 MR. FUCHS: That's correct, Your Honor.

18 THE COURT: Is it Government's Exhibit 11?

19 MR. FUCHS: That's correct, Your Honor.

20 THE COURT: And I think it's Defense Exhibit 9 for
21 identification. I mean, I have looked at the exhibit.
22 Government's Exhibit 11 is in evidence. The similarity and the
23 physical appearance between the suspect, as exhibited by
24 Government's Exhibit 11, and the defendant is for a jury to
25 determine. As the Judge of the case, I will tell you, as I

1 mentioned at the motions hearing, it's a striking similarity.

2 MS. NEWBERGER: It is.

3 THE COURT: I thought it was actually a photograph of
4 your client when I first saw it. So, to suggest that there
5 was -- that there's some similarity of the arrest of someone for
6 undisclosed reasons, here, it's clear to me that, Mr. Lucas was
7 arrested because they thought he was the suspect. He looked
8 exactly like the suspect. Later they determined that he was not
9 the suspect. There is no dispute about that.

10 But I'm not sure what the similarity is with respect
11 to two lawsuits that are filed over an arrest we don't know what
12 the status is, we don't know what the facts are. We don't even
13 know what the -- we're left, I guess, just to whatever his
14 response is.

15 MS. NEWBERGER: Well, we are left with his response.
16 I mean, I recognize that we're doing -- I'm doing this under
17 609(b), and so I'm not going to offer extrinsic evidence. I'm
18 left with the answer that he gives me.

19 MR. FUCHS: Your Honor, I've spoken to Officer Laronde
20 just working this case up. He mentioned that he's been sued
21 before, but he doesn't know anything about them.

22 MS. NEWBERGER: Your Honor, he has given a deposition.
23 I mean, he knows about the lawsuit. He's been questioned about
24 it before in a criminal matter in Baltimore City Circuit Court.

25 THE COURT: About a lawsuit.

1 MS. NEWBERGER: (Nodding head.)

2 THE COURT: One lawsuit. But you asked him about two.

3 MS. NEWBERGER: That's what he was asked about in
4 Baltimore City Circuit Court; and he said, yes, he had been sued
5 twice. The specifics that I have are about one of those
6 lawsuits.

7 THE COURT: And the specifics of the lawsuits is what?

8 MS. NEWBERGER: What was in the record from the
9 Baltimore City criminal case, and it's the deposition that he
10 took with the plaintiff's attorney in the case.

11 THE COURT: In a civil case?

12 MS. NEWBERGER: In a civil case.

13 THE COURT: And you have a case number, copy of the
14 deposition?

15 MS. NEWBERGER: I do not, Your Honor. And I
16 apologize. I repeatedly --

17 THE COURT: If you have the deposition and the case
18 number, it's just a matter of picking up the telephone or
19 walking over to the courthouse and pulling out the file and see
20 what the status is.

21 MR. HURSON: The outcome, I think our position --
22 frankly, probably the Government's -- would be irrelevant to the
23 inquiry of --

24 THE COURT: The status.

25 MR. HURSON: Or status even. I think that, under the

1 rules, if you have a good-faith basis to make an inquiry that
2 involves character as to truthfulness, and we would argue
3 that --

4 THE COURT: But the point, in terms of, does this or
5 does this not involve character of truthfulness.

6 MR. HURSON: Well, if the allegation in the lawsuit is
7 that he arrested someone claiming that something happened, when
8 in fact he said, well, that's not what happened, then that would
9 go right to the heart of whether he's telling the truth. It
10 doesn't have to be identical to this case. In fact, if it was,
11 that may be reason not to allow it in. It's just a question
12 of -- and we're stuck with his answer. I mean, the questions
13 really would be limited to, weren't you sued; this is what
14 happened. That's not what -- I mean, if he says otherwise,
15 sobeit, we're stuck with that.

16 MS. NEWBERGER: If he says something that is directly
17 different than what he's previously testified to or said in a
18 deposition, I mean, he can be impeached. But the bottom line
19 is, I think that the situation, as he described it, which is, I
20 didn't think the guy was going to be prosecuted, but I arrested
21 him, anyway, goes to his credibility.

22 THE COURT: First of all, it's under 608(b) not 609.

23 MS. NEWBERGER: I'm sorry. Thank you, Your Honor.

24 THE COURT: I'm going to permit this line of inquiry
25 in terms of his being sued. I have no knowledge as to whether

1 he is one person being sued or whether the whole police
2 department is being sued.

3 MS. NEWBERGER: From the jacket of the deposition, it
4 looks like just he's been sued.

5 THE COURT: I'm going to permit the inquiry.

6 MR. SIPPEL: Being a former civil attorney, the jacket
7 of a deposition is no way to indicate all the parties in a
8 lawsuit and the ultimate disposition or pending nature of a
9 lawsuit. It would simply have the deponent's name; and, if
10 there are multiple defendants, you would just have their name.

11 THE COURT: The bottom line is that you have the case
12 number from the jacket of the deposition. It's much more useful
13 to the Court in terms of making a ruling under 608(b) in terms
14 of what the context is, whether it's one defendant, whether it's
15 the whole police department, whether it's a 1983 cause of action
16 for excessive force, whether it's, you know, what's called a
17 Monell claim, for pattern and practice. I have no idea what
18 we're --

19 You're asking this witness to -- you can ask if he's
20 aware of a lawsuit being filed against him and what is the
21 nature of the lawsuit. You are not permitted to conjecture in
22 terms of what the contentions in the lawsuit are, because we
23 don't have a copy of the lawsuit.

24 Ms. Newberger, you haven't even seen the lawsuit, so
25 we're not going to give the jury any conjecture. You can ask

1 him if he's aware of a lawsuit being filed against him, and, as
2 you said, you're stuck with his response to what his knowledge
3 is of the claim and what the disposition of the status of the
4 case is. So I'll permit that limited inquiry. You can't go too
5 far afield, because we don't know what we're dealing with here.

6 MS. NEWBERGER: All right.

7 (End of bench conference.)

8 BY MS. NEWBERGER:

9 Q Officer Laronde --

10 A Yes, ma'am.

11 Q -- are you aware that you have been sued civilly?

12 A Yes.

13 Q Okay. Can you tell us what the suit was?

14 A It was two guys that were -- again, I don't remember the
15 exact facts, but it was two guys that were in a vehicle. They
16 fled a shooting scene. We tried to stop them. They bailed out
17 of the car. They were both arrested. And I think both of
18 them -- one of them sued me; and then, once that went to trial
19 and it was over and he won, then the other guy sued me.

20 Q Okay. So in the -- just to be clear, I wasn't clear from
21 that.

22 Were you saying that the first person who sued you won
23 the lawsuit against you, or he won another case, and then sued
24 you?

25 A No. I think -- well, I don't know if he won. We never

1 actually went to court. We never went to trial. We had like
2 a -- you know, I remember I met with two lawyers in a room, and
3 they talked -- a deposition.

4 Q A deposition?

5 A And then after that, I didn't hear anything about it. But
6 once that deposition was over, I think like a week later or like
7 a month later, then the other guy decided to sue me; and,
8 basically, it had nothing to do with the first guy; but, you
9 know, his allegations were exactly the same.

10 Q Okay. And the issue in that case was that these two men
11 were arrested?

12 A I thought it was -- I actually don't know what the --

13 Q Well, let's talk about the one that you do remember. That
14 one man was arrested?

15 A But I don't remember what the charge was, like, what he was
16 suing me for. I just know that I had to make a statement about
17 the case.

18 Q Okay. And you had arrested him?

19 A Yes.

20 Q And did you know when you arrested him whether you had
21 enough evidence for him to be prosecuted?

22 MR. FUCHS: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MS. NEWBERGER:

25 Q Officer Laronde, you also discussed earlier today that you

1 got in a bar fight?

2 A Yes, ma'am.

3 Q Now, you were off duty at the time; correct?

4 A Correct.

5 Q That means it wasn't -- you weren't on your shift?

6 A I wasn't working.

7 Q You weren't working. But, as a police officer, you're
8 always supposed to conduct yourself with the dignity of a police
9 officer, aren't you?

10 A Yes, ma'am.

11 Q And on that night, when you were in that bar, did you have
12 your gun with you?

13 A No.

14 Q Now, you were found to have been publicly intoxicated;
15 correct?

16 A Say that again?

17 Q You were found to have been publicly intoxicated?

18 A No.

19 Q No? You weren't intoxicated?

20 A There was no finding of me being intoxicated, or anything
21 like that.

22 Q Okay. Were you intoxicated?

23 A No.

24 Q You were not intoxicated?

25 A I was drinking.

1 Q You were drinking?

2 A Yes.

3 Q But you were not intoxicated?

4 A Correct.

5 MR. FUCHS: Objection, Your Honor.

6 THE COURT: Overruled.

7 BY MS. NEWBERGER:

8 Q And you were -- were you found to have been using
9 profanity?

10 A That's what I got pretty much in trouble for.

11 Q Okay.

12 A Basically, I got beat up in a bar, and I got in trouble for
13 cursing at the guy. That's what happened.

14 Q Well, you also got in trouble -- I mean, they said that you
15 got into an altercation in that bar; correct?

16 A Right.

17 Q So an altercation usually involves two people.

18 A It was actually -- it was three of them and -- you know, it
19 was actually -- it was so much more to the story that it's, you
20 know, if I start talking about that, it's -- I can go on for
21 hours.

22 Q Okay. But so you were using profanity?

23 A The way it happened, yes, I was.

24 Q Now, did you get into a physical fight with them as well?

25 A Like I said, after -- without getting too much into it, the

1 guy approached me, we had strong words. I said a lot of things
2 that I would say again. And all of a sudden, I got choked out,
3 and the guy I was with got beat up, and my other friend got beat
4 up by the bouncers who worked in the bar. And they approached
5 me, and I didn't even know they worked there.

6 Q Okay. And then you got into a fight with them?

7 A No. I got choke out and was left on the floor, and my
8 buddies got beat up. None of us threw a punch.

9 Q All right. But you were using profanity?

10 A Definitely.

11 Q Okay. And you're aware in your role as a police officer of
12 the legal term "assault"?

13 A The legal term of assault?

14 Q Yeah, assault.

15 A I mean, the way you're going to use it on me right now,
16 probably, but I'm not sure if -- if you want to let me know --

17 Q Well, an assault can involve both a physical altercation as
18 well as a verbal one, can't it?

19 A Yes, ma'am.

20 Q Okay. So it could be said that you were engaging in an
21 assault at that time?

22 MR. FUCHS: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MS. NEWBERGER:

25 Q And you were reprimanded for that situation?

1 A Yes, ma'am.

2 MS. NEWBERGER: Can I have a moment, Your Honor?

3 THE COURT: Yes, certainly.

4 (Pause.)

5 BY MS. NEWBERGER:

6 Q Officer Laronde, do you have your badge with you today?

7 A Yes, ma'am.

8 Q Could we -- could you show us your badge?

9 A Sure. (Witness complies.)

10 Q So that's the badge you would have been wearing on July 6,
11 2009?

12 A Just like this, except my vest -- I usually wear my vest --
13 I wear a T-shirt. I wear my vest, and then I tuck my badge into
14 my vest so you can't see it.

15 Q Okay.

16 A And then once we do something, I take it out.

17 Q Okay. And that is the standard issue badge for the
18 Baltimore City Police?

19 A Yes, ma'am.

20 MS. NEWBERGER: Thank you.

21 THE COURT: Thank you, Ms. Newberger.

22 Mr. Fuchs, any redirect?

23 MR. FUCHS: Yes, Your Honor.

24

25

REDIRECT EXAMINATION

1
2 BY MR. FUCHS:

3 Q Officer Laronde, you were asked certain questions about
4 report writing, statements of probable cause; is that correct?

5 A Yes, sir.

6 Q In the eight years that you have been a member of the
7 Baltimore Police Department, how many arrests do you think
8 you've made?

9 A I've made thousands.

10 Q Okay. And in each arrest, is a statement of probable cause
11 usually written, some kind of report written?

12 A Yes, both report and statement of probable cause.

13 Q Is it fair to say that in your eight years, you've written
14 thousands of reports and thousands of statements of probable
15 cause?

16 A Yes, sir.

17 Q Have some of those contained mistakes?

18 A Yes.

19 Q Okay. Was there a mistake in this case?

20 A Yes.

21 Q Did you write the report?

22 A No.

23 Q With regards to the arrest of Mr. Lucas itself, you parked
24 on Wilkens when Officer Huter got out; is that correct?

25 A Yes, sir.

1 Q And then you saw Officer Huter engage Mr. Lucas; Mr.
2 Lucas --

3 MS. NEWBERGER: Objection, Your Honor. These are
4 leading questions.

5 THE COURT: Overruled.

6 BY MR. FUCHS:

7 Q Mr. Lucas took off running; is that correct?

8 A Yes, sir.

9 Q And you followed in your vehicle; is that correct?

10 A Yes.

11 Q At some point did you put your lights on?

12 A Yes.

13 Q Okay. When was that?

14 A Immediately. Once he started running, I put my lights on.

15 Q Did you keep your lights on?

16 A Yes. I never shut them off. Even when we came back to the
17 car, they were still on.

18 Q And I'm sorry. Just to be clear, we're not talking about
19 your headlights; we're talking about --

20 A Flashing red-and-blue lights.

21 Q Okay. And then at some point you rejoined Officer Huter in
22 that alleyway; is that correct?

23 A Yes.

24 Q When you rejoined Officer Huter, were there any other
25 police officers around?

1 A No.

2 Q There were no other police officers in that alley; is that
3 correct?

4 A Correct.

5 Q It was you, Officer Huter, and Mr. Lucas; is that correct?

6 A Correct.

7 Q All right. And Mr. Lucas was put in cuffs; is that
8 correct?

9 A Yes.

10 Q Okay. And then at that point your testimony -- you
11 testified that Officer Huter directed you to look for the gun in
12 that part of the alley; is that correct?

13 A Yes, sir.

14 Q Okay. When you were searching for the gun, was it still
15 just you and Officer Huter in the alley?

16 A I believe -- once the thing is -- once I ran in there,
17 there were police cars there, and then officers filed in behind
18 me.

19 Q Okay.

20 A So they -- I don't remember exactly who was there. I know
21 other officers were in the alley by the time I had the gun, but
22 I don't know who and where they were.

23 Q Okay. Was Mr. Lucas still standing nearby?

24 A Yes.

25 Q All right. When you went to search that part of the alley,

1 you found the gun quickly; is that correct?

2 A Yes.

3 Q All right. Did you find anything else in the alleyway?

4 A No.

5 Q Did you find any contraband?

6 A No.

7 Q Any other metallic objects?

8 A No.

9 Q Any other guns?

10 A No.

11 Q All right. When you picked up the gun, was Mr. Lucas still
12 standing nearby?

13 A Was he still standing --

14 Q Nearby.

15 A Yes.

16 Q How far away from you was he?

17 A Probably from me to the jury bench.

18 Q Okay. Why did you pick up the gun?

19 A I found it, and I just -- I picked it up to recover it.

20 Q Did you secure it?

21 A Yes.

22 Q Okay. Were you concerned about officer safety?

23 A It was evidence, and I just wanted to unload it and get it
24 in our possession.

25 Q Okay.

1 MR. FUCHS: Court's indulgence, Your Honor.

2 (Pause.)

3 BY MR. FUCHS:

4 Q Just back real briefly, Officer Laronde, when you put on
5 your lights and sirens, did Mr. Lucas slow down or stop?

6 A No.

7 Q Did he keep running?

8 A He kept going.

9 Q When you picked up the gun, you picked it up with your
10 hands; is that correct?

11 A I picked it up, but I tried to touch it as little as
12 possible. I used my fingertips. I know how to unload it so
13 I just -- the little trigger that I hit to unload it.
14 Everything was dumped in an envelope, and then put together. I
15 did the best I could not to put fingerprints all over it.

16 Q I understand. And you submitted the gun for prints; is
17 that correct?

18 A Yes.

19 Q Okay. When you picked up the gun, did you notice if there
20 was any blood on it?

21 A I looked at it, but I didn't notice any blood.

22 Q Did you notice any body fluids of any kind?

23 A No.

24 Q Did you submit it for DNA?

25 A No.

1 Q Would you typically submit a gun for DNA?

2 A Normally not, not in a case like this.

3 MR. FUCHS: No further questions, Your Honor. Thank
4 you.

5 THE COURT: Any recross just on these points,
6 Ms. Newberger?

7 MS. NEWBERGER: Your Honor, if I may have one moment?

8 THE COURT: Certainly.

9 (Pause.)

10 MS. NEWBERGER: No recross, Your Honor.

11 THE COURT: All right. Thank you very much.

12 Officer Laronde, you may step down. You shouldn't
13 discuss your testimony with anyone in the event you're called
14 back to the witness stand.

15 THE WITNESS: Thank you, sir.

16 (Witness excused.)

17 THE COURT: Ladies and gentlemen, by the way, just so
18 you understand the process here, one of the ways that a jury
19 trial in real life is different from television is you don't
20 have witnesses all sitting in the courtroom. In all cases --
21 all cases in this courthouse there is sequestration. The only
22 exception is that Agent Hayden is designated as the case agent,
23 so he is permitted to stay in the courtroom. Otherwise, all
24 witnesses -- Government, defense witnesses, everyone -- stays
25 outside and is brought in and is instructed not to discuss the

1 case when they leave the witness stand.

2 In case you were wondering how that works, that's why
3 everyone leaves and does not stay in the courtroom.

4 Next witness, Mr. Fuchs or Mr. Sippel.

5 MR. SIPPEL: Thank you, Your Honor. The Government
6 calls Sean Dorr.

7 DEPUTY CLERK: If you'll raise your right hand.

8 SEAN DORR, GOVERNMENT WITNESS, DULY SWORN

9 DEPUTY CLERK: Sir, if you would, adjust yourself to
10 the microphone. State your name and then spell your name for
11 the record.

12 THE WITNESS: My name is Sean Dorr. That's S-E-A-N,
13 D-O-R-R.

14 DEPUTY CLERK: Thank you.

15 Counsel?

16 DIRECT EXAMINATION

17 BY MR. SIPPEL:

18 Q Good morning, Mr. Dorr.

19 A Good morning.

20 Q What is your official title?

21 A Latent print examiner.

22 Q And with whom are you employed?

23 A The Baltimore City Police Department.

24 Q And how long have you been working for the Baltimore City
25 Police Department?

1 A I've been working for Baltimore City for eleven years.
2 I've been in the latent print unit for nine years.

3 Q And, if you would, tell the ladies and gentlemen of the
4 jury a little bit about your educational background.

5 A I have a Bachelor's degree in the field of biology from
6 Towson University. I completed the three-year apprenticeship
7 program given by the Baltimore City's latent print unit. I
8 completed the advanced administrative fingerprint class given by
9 the FBI in Quantico, Virginia. And I've passed the
10 International Association for Identification certification test
11 for latent print examiners, and last August I was recertified by
12 the International Association for Identification.

13 Q And, Mr. Dorr, how many fingerprint comparisons have you
14 had the opportunity to make over the course of your career?

15 A I've done over tens of thousands of comparisons during my
16 career.

17 Q Mr. Dorr, have you ever been qualified to testify as an
18 expert in court?

19 A Yes, I have.

20 Q And approximately how many times?

21 A About 130 times. Those include Baltimore City Juvenile
22 Court, Baltimore City District Court, Baltimore City Circuit
23 Court, and U.S. Federal Court.

24 Q So you've been qualified as an expert in fingerprint
25 analysis in this very Court?

1 A That's correct.

2 Q And in what area, specifically, have you been qualified as
3 an expert?

4 A Fingerprint development, fingerprint comparisons, and
5 identifications.

6 Q And, Mr. Dorr, tell the ladies and gentlemen of the jury
7 the kind of cases you have testified in before.

8 A I've testified in everywhere from larceny of auto up to
9 homicide cases.

10 Q And have you testified in cases where an item was -- or you
11 tried to recover an item-- tried to recover fingerprints from an
12 item but were unable to do so?

13 A Yes, I have.

14 Q And how often do you testify in those types of cases?

15 A I would -- approximately 70 percent of the cases I do are
16 not suitable cases I testify for.

17 Q And please tell the ladies and gentlemen of the jury what
18 you mean by "not suitable cases."

19 A Not suitable is a print that there is not enough friction
20 ridge detail left on the item that's touched, and then no
21 comparison can be made and any identification from that
22 comparison could be determined.

23 Q Mr. Dorr, what are proficiency tests?

24 A A proficiency test is a test that's given by an outside
25 agency to make sure that the examiners are up to par or above

1 par. Each of the nine years that I've taken the proficiency
2 test, I've scored a hundred percent.

3 Q Mr. Dorr, is there a verification process in the Baltimore
4 City latent print lab?

5 A Yes. All identifications, whether to suspects or to
6 elimination cards, are verified by another certified examiner.

7 Q So all processing of items for latent prints, actually, two
8 latent print examiners look at; is that correct?

9 A Not processing. Just identifications made to lift cards.

10 MR. SIPPEL: Your Honor, the Government offers
11 Mr. Dorr as an expert in the field of fingerprint analysis.

12 THE COURT: Any voir dire on this, Mr. Hurson?

13 MR. HURSON: No, Your Honor.

14 THE COURT: All right.

15 Then Mr. Dorr is accepted as an expert in the field of
16 fingerprint analysis. Accordingly, as an expert, he is
17 permitted to give his opinion. You can judge his opinion for
18 whatever you decide the weight to give it, but he is
19 qualified -- unlike normal witnesses, he is qualified as an
20 expert to give his opinion, ladies and gentlemen.

21 You may continue, Mr. Sippel and Mr. Dorr.

22 MR. SIPPEL: Thank you, Your Honor.

23 BY MR. SIPPEL:

24 Q Mr. Dorr, can you explain to the jury what a latent print
25 is?

1 A A latent print is any chance or accidental impression of
2 the friction-ridge skin that's left on an item after it's been
3 touched. If you'll notice, on the underside of your hand, from
4 the base of your palm to the top of your fingertips, there is
5 raised and lowered areas of skin. The raised area of skin is
6 what we call the friction ridge, friction-ridge skin. This is
7 made up of individual friction-ridge units, and each one of
8 these units has its own sweat pores. So your hands have the
9 ability to constantly make its own moisture.

10 Now, it's this moisture that can combine with any
11 outside moisture, such as oil from other parts of your body --
12 blood, grease, or paint -- that you can transfer on the outline
13 of this friction-ridge skin when you touch an item. Normally, a
14 developmental process will take place to see -- so that the
15 person will be able to see that print when it's left on an item.
16 Normally, that would be black powder.

17 That powder would adhere to the moisture, and then a
18 piece of transparent tape will be placed onto that item, and the
19 print will be lifted off and put onto a white background index
20 card, which would be a lift card.

21 Q Mr. Dorr, can you explain what a known print is?

22 A A known print is an intentional reproduction of this
23 friction-ridge skin, either by placing a printer's ink on this
24 skin area and rolling and tapping that onto a fingerprint card;
25 or there is a new machine that's called a "live skin machine"

1 that acts like a Xerox machine to copy this area of skin on the
2 fingers and the palm.

3 Q So, essentially, if somebody has been fingerprinted, that
4 would be referred to as a known print?

5 A That's correct.

6 Q And, Mr. Dorr, tell the ladies and gentlemen of the jury
7 how you use latent and known prints to make identifications.

8 A What we do is, I would first analyze the lift card for the
9 latent print to make sure that there is enough friction-ridge
10 detail that a comparison can be made. And then once I determine
11 it is a suitable print and I can make a comparison, I'll look
12 for the relationship between three different types of details
13 that I would notice in that friction-ridge skin.

14 The first level of detail I'm going to look for is,
15 can I tell if it's a finger or a palm by the friction-ridge
16 flow. If I can tell that it's a finger, then I'm going to look
17 for which type of pattern I believe it is.

18 There's three basic patterns that it can be. It can
19 be a whirl pattern, which is a circular-type pattern; there is a
20 loop pattern, where the ridge is flowing from one side, recurve
21 around and flow back out the exact same side; and then there's
22 arch patterns, which are patterns where the friction ridges will
23 flow in from one side, make a hill formation, and flow out the
24 opposite side.

25 From that I'm going to look for just those types of --

1 that pattern on the temporary card or the fingerprint card of
2 the known suspect.

3 Then I am going to go into the level-two details,
4 which could either be dots, which are individual friction-ridge
5 units; there can be ending ridges where a ridge will flow and
6 come to an abrupt stop; and there's bifurcations where the
7 friction ridge will flow and then split into two or more pieces.

8 Now, what I look for are those types of level-two
9 details and their relationship within that print to one another.

10 Once I set aside three or four of those friction-ridge
11 details, I'll look into the known print for the exact same
12 fingerprint pattern, and then those friction-ridge details,
13 which are the level-two details.

14 If possible, I will go to the level-three details,
15 which are the thickness of the friction-ridge skin and their
16 pores, if those pores are visible in both the known prints and
17 the unknown prints, and I can use those to help me compare it.
18 I'll make sure that there are no discrepancies between the two.

19 Then I'll add on a couple more of the friction-ridge
20 details in the known print, and then I'll go back and look in
21 the unknown or the latent print to make sure I can find those
22 exact same points and the exact same relationship between those
23 in the latent and those in the known print.

24 Once I've determined that there's enough consistency
25 between the unknown and the known, and that there are absolutely

1 no discrepancies, then I can make an identification and hand
2 that off to another certified examiner, and they would repeat
3 that process.

4 Q Mr. Dorr, does a person always leave latent prints when
5 they -- when a person touches or steps -- I guess you could
6 leave a footprint as well on an item.

7 A That's correct.

8 Q Are prints always left?

9 A No, they are not.

10 Q And what are the factors that affect whether or not a
11 latent print is left on a surface?

12 A There are three basic factors. There is the pre-transfer
13 factor, and that's the factor of how much moisture is on this
14 person's friction-ridge skin at the time that they're touching
15 an item. If there is not enough moisture, then there is not
16 enough detail that's going to be left on the item.

17 If there's too much moisture, then when they touch an
18 item or put any amount of pressure, they smear that moisture,
19 and it covers into the furrows or the area in between the
20 friction-ridge skin, and they leave what we would call a finger
21 mark on the object and not a fingerprint.

22 Again, any type of wiping off of that friction-ridge
23 skin area -- if you have your hands in your pockets and you pull
24 them out, if you just wipe them on your pants and then touch an
25 item -- you wipe that moisture away. And then when you touch an

1 item, you're not going to transfer any moisture to that item.

2 The second factor would be the actual transfer factor,
3 and that is: What are you touching?

4 Normally, we like to have a nice, smooth surface --
5 glass; nice, hard plastic. Mirrors are a great example that
6 will leave very good prints on, a nice, smooth surface so that
7 when the powder is applied and the tape is put on the print,
8 that you only lift the print off the item; you don't lift any of
9 the background information, which makes it difficult for us to
10 determine if that friction ridge is broken or if it's just a
11 piece where the background is interfered with that
12 friction-ridge skin. And then I can't make any type of
13 determination as if it's a flowing ridge or if it's an actual
14 detail that I might have to take into consideration.

15 Again, a nice, smooth surface. Any rough texture, you
16 break up the friction-ridge skin when you touch an area, and we
17 can't use those for any type of comparison or identification.

18 And the third factor is: What happens after the area
19 is touched?

20 This is a very thin layer of moisture. Any length of
21 time where it's left out in the heat, this could evaporate. Any
22 type of cleaning of the object to wipe off or smear the print so
23 it can't be useable; and any type of touching again by another
24 person, again, they could either cross their print over the top
25 of the initial print that's left, leaving both of those to be

1 unusable for comparison. Or they could wipe away or they could
2 smear the initial print that's left on an item.

3 Q So, Mr. Dorr, is it fair to say that, if an item that
4 you're trying to recover latent prints from is in a pocket or in
5 a waistband that's then pulled out of that pocket or pulled out
6 of the waistband, could the recovery of the latent prints be
7 affected in that scenario?

8 MR. HURSON: Objection, Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: Yes, it could.

11 BY MR. SIPPEL:

12 Q How so?

13 A Again, we're talking about a very thin layer of moisture
14 that's left on that item. So any type of contact that that item
15 comes in with another item, you could transfer or smear the
16 initial print that's left on the first item.

17 Q Tell the ladies and gentlemen of the jury about rubber.
18 How is rubber in terms of recovering latent prints?

19 A Again, rubber is kind of like in between a porous and a
20 nonporous item. Normally, you would place the black powder on
21 that type of an object, but the rubber, because of the
22 elasticity of the rubber, can expand and contract. So, when you
23 touch the item, usually you stretch the item, so that can
24 elongate and break up the friction-ridge skin that's left on it
25 when it's touched. And, normally, you don't have a very smooth

1 surface of the rubber. It's usually some kind of textured area.

2 Q And if the rubber is textured, what kind of scenario or
3 what kind of challenges does that present to you?

4 A Again, that's even going to make it harder for me to pull
5 off any type of a suitable print from that item because of the
6 rough texture.

7 Q Mr. Dorr, you mentioned that metal is an example of a
8 nonporous surface and rubber is a cross between nonporous and --

9 A It's a little bit of a problem for us.

10 Q And guns -- some guns contain both, some guns just contain
11 metal; is that correct?

12 A That's correct.

13 Q And what is your experience in recovering fingerprints off
14 of firearms in your office?

15 MR. HURSON: Objection, Your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: My personal experience is about maybe
18 one out of every hundred items I process will give me a suitable
19 print. But, normally, those are not on the actual handguns
20 themselves. They would be found off of a magazine or the gun
21 box that the item was brought in.

22 BY MR. SIPPEL:

23 Q And can you give us an example of how often you recover
24 firearms -- fingerprints off of firearms?

25 MR. HURSON: Objection, Your Honor. May we approach?

1 THE COURT: Yes.

2 (Conference held at the bench.)

3 MR. HURSON: One is to the form of the question, if
4 you can give me an example. I'll have to ask the witness, I
5 guess, to really figure out what he was really asking, but I
6 think where we're going is -- I think -- and correct me if I'm
7 wrong -- every case he's ever been involved in, what's the
8 recovery rate, and I think he is limiting it to just with
9 respect to what Dorr has done.

10 MR. SIPPEL: That's the way the question was phrased.

11 MR. HURSON: That's fine, I mean, subject to my
12 objection. But my issue is that I've gotten no discovery on
13 those prior analysis. He just carefully walked him through how
14 it is that every single gun and the conditions in which it's
15 found, and the conditions in which it's recovered, and the way
16 it's built -- rubber handle versus metal handle, porous versus
17 nonporous -- can affect the recovery rate.

18 Now he is moving that and saying, well, what's your
19 recovery rate in all these guns.

20 THE COURT: As to his experience --

21 MR. HURSON: Right, but it can't be --

22 THE COURT: -- not getting into the statistical issue.

23 MR. HURSON: That's fine. My objection --

24 THE COURT: The question is as to Mr. Dorr's
25 experience.

1 MR. HURSON: Which I appreciate, but my issue is that
2 I don't have any of the paperwork on his other individual --

3 THE COURT: That implies there is paperwork,
4 Mr. Hurson.

5 MR. HURSON: Oh, I think there is. I've done previous
6 cross-examinations of this gentleman where he says he's kept
7 reports. I received a small report in this case, so I think
8 it's fair to say there is a report in every single case. We
9 haven't gotten those.

10 So, certainly, he is subject -- I understand he is
11 subject to cross-examination. I plan to do that. But the
12 question is what have we received from him so that we can have a
13 meaningful cross-examination? If he's going to say this is
14 what's happened in all these other cases, I think it's pretty
15 clear that under Rule 16, we should have gotten those.

16 So that's my objection. I recognize that he's --

17 THE COURT: I don't know that it's necessarily clear
18 under Rule 16 whether the answer -- I don't think that's correct
19 in terms of scope. The question is fairly clear in terms of
20 just what his experience has been. So your objection is
21 overruled, but I don't think we need to -- I think we just need
22 to get to the thrust of what's involved in this case. We have
23 enough background here now that I think we just need to move on
24 to what's involved in this case.

25 MR. HURSON: For clarification --

1 MR. SIPPEL: Okay.

2 MR. HURSON: For clarification purposes, my point is
3 that the basis of the opinion of an expert is disclosable, and
4 that means what he's relied on and what he is relying on now is
5 memorialized, and that's what I'm looking for.

6 THE COURT: I think we've laid sufficient foundation
7 just to get through the matter of this case and the analysis of
8 this case.

9 MR. SIPPEL: Okay. We'll do that, Your Honor.

10 (End of bench conference.)

11 BY MR. SIPPEL:

12 Q Mr. Dorr, I am going to show you what's been marked as
13 Government's Exhibit 9. Mr. Dorr, do you recognize that item?

14 A Yes, I do.

15 Q And what is it?

16 A This is a revolver that was recovered under Complaint
17 Number 09AG00251N.

18 Q And did you examine --

19 A Yes.

20 Q -- that particular firearm?

21 A Yes, I did.

22 Q And what did you examine it for?

23 A I developed -- I was asked to process this item for latent
24 prints.

25 Q And how do you know that you examined that specific

1 firearm?

2 A I can see where my initials are still on the firearm and
3 where I wrote the property number on this item.

4 Q Okay. And do you recall whether you were successful in
5 obtaining latent prints off of that particular firearm?

6 A In this case, there were no suitable prints recovered from
7 the item.

8 Q And, Mr. Dorr, explain to the ladies and gentlemen of the
9 jury the specific characteristics of that firearm that would
10 make it difficult or not difficult in recovering latent prints
11 off a firearm.

12 A In this case, the -- again, the grip is a very textured
13 rubber surface. That would be a very poor surface to leave any
14 type of suitable prints. The roundness, because the cylinder is
15 round, not enough friction-ridge skin will come into contact
16 with any part of that surface at one time because of the rounded
17 nature of the item.

18 Again, the barrel of the gun, again, it's a rounded
19 surface, but it has the etching of the company name. That type
20 of etching or stamping of a company name or logo could hinder my
21 ability to find a suitable print on it.

22 The little -- again, I'm not a firearms examiner, but
23 the little button that you would have to push to load and unload
24 and pull the cylinder out is a very textured surface. So that
25 area would be a very poor surface to process and get a print off

1 of.

2 In this case, the -- again, the hammer of the
3 firearm is again another very textured surface. So that's going
4 to be a very poor surface to leave any type of print on. And
5 the top area, which is very textured itself, that looks like a
6 smooth surface on the top; but, if you notice, there's a lot of
7 lines cut into the metal. That, again, because of that breaking
8 up of the surface, that's going to break up any type of print
9 that would be left. So we're not going to be able to find a
10 suitable print on that surface either.

11 The only smooth area on the gun would be, if you were
12 right-handed, right above the trigger on the left-hand side of
13 the gun where your thumb could possibly touch this. This is the
14 only smooth area that has enough area in size that a suitable
15 print may have been left there. Again, I wouldn't normally come
16 in contact with that area with my thumb, if I was holding the
17 weapon, though.

18 MR. SIPPEL: Okay. No further questions, Your Honor.

19 THE COURT: Thank you.

20 Cross-examination, Mr. Hurson?

21 MR. HURSON: Thank you, Your Honor.

22 THE COURT: Thank you, Mr. Sippel.

23 CROSS-EXAMINATION

24 BY MR. HURSON:

25 Q Now, when you're comparing two fingerprints, you need a --

1 to see if they match, you need a certain level of ridge detail
2 in both the known print and then the recovered latent print;
3 right?

4 A That's correct.

5 Q And you need to be able to point to specific areas on both
6 the known and the latent to determine that they match; right?

7 A That's correct.

8 Q And there needs to be a sufficient number of these points
9 of similarity in order for you, as an examiner, to say, yes,
10 there is a match; right?

11 A I'm not sure what points you're talking about.

12 Q Well, the points in the -- you're going to find specific
13 places on the known print; correct?

14 A What I would be looking for is the consistency of the
15 friction-ridge skin.

16 Q Right.

17 A I don't know exactly what point on that skin that you want
18 to compare.

19 Q We're not talking -- just in your general practice, if
20 you're going to say that two prints match, what you're really
21 saying are specific points on both of those prints match one
22 another; correct?

23 A That's not what I'm saying, no.

24 Q So how does one say that two prints match?

25 A I'm looking for consistency in level one, two, and three of

1 that print -- of the unknown versus the known print.

2 Q And maybe we're just arguing about the meaning of the word
3 "consistency." What does "consistency" mean between two prints?

4 A That they are the exact same, and there's no discrepancies.

5 Q Okay. That's exactly what I meant to say to you.

6 So, when you're comparing two prints, you're looking
7 for no discrepancies between similar areas; correct?

8 A That's correct.

9 Q Now, in order to call a match between two prints, you're
10 going to need a match in both that level one and level two area;
11 correct?

12 A That's correct.

13 Q And you don't need level three area; it's nice if you have
14 it, but you don't need it.

15 A That's correct.

16 Q But it's true that, if you're going to exclude a print --
17 meaning, the known print is not the print that you recovered --
18 you don't need as much detail as you would to include; correct?

19 A That's correct.

20 Q Now, in this case you completed -- I think you wrote a
21 report; right?

22 I'm going to approach with what's been previously
23 marked as Defendant's 13 for identification; correct?

24 A Yes. This is a latent print unit physical evidence report.

25 Q And that's your report; you wrote that; right?

1 A Yes, I did.

2 MR. HURSON: Your Honor, I apologize. I forgot to ask
3 if I could approach.

4 THE COURT: That's all right.

5 BY MR. HURSON:

6 Q Let me show you a second report. That's your handwriting
7 at the bottom of that as well; correct?

8 A Yes, it is.

9 THE COURT: Are they both Defendant's 13 for
10 identification?

11 MR. HURSON: I'm sorry. The second one is Defendant's
12 Exhibit 14 for identification.

13 THE COURT: All right.

14 BY MR. HURSON:

15 Q So starting with 14 --

16 MR. HURSON: Can I turn this on?

17 MR. SIPPEL: Your Honor, I am going to object, if he
18 is going to publish it, because it hasn't been admitted.

19 THE COURT: It can't go on the screen until it is in
20 evidence.

21 MR. HURSON: I move both of these into evidence, Your
22 Honor.

23 MR. SIPPEL: Objection, Your Honor. It's a hearsay
24 document. He's already testified --

25 THE COURT: Approach the bench, please.

1 (Conference held at the bench.)

2 MR. SIPPEL: Your Honor, typically, expert reports are
3 not admissible, especially when they testify to the subject of
4 the content of the report.

5 THE COURT: First of all, this is a Government report;
6 correct --

7 MR. SIPPEL: Understand.

8 THE COURT: -- about which he's testifying. I haven't
9 seen the report. I don't know what it has --

10 MR. HURSON: Your Honor --

11 THE COURT: -- hearsay or not.

12 MR. HURSON: This is a two report -- I mean, there is
13 nothing on them, but --

14 THE COURT: Defendant Exhibit 13 now for
15 identification is merely a latent print unit physical evidence
16 report, it lists items, handgun, cartridges. There is a check
17 box that says, No Suitable Partial Latent Print was Observed and
18 Developed, signed by Sean Dorr. I don't know what hearsay there
19 is, but why don't you take a look --

20 MR. SIPPEL: Your Honor, I'll withdraw the objection.

21 THE COURT: There is no hearsay as to that. It's his
22 report, his finding.

23 And then the second, Defendant's Exhibit 14 for
24 identification, is a latent print unit report.

25 MR. SIPPEL: I don't believe Mr. Dorr offered that.

1 THE COURT: I would note that it's also sub-spelling
2 in Spanish underneath the -- which is perhaps a social
3 commentary on the --

4 MR. HURSON: No comment.

5 THE COURT: Laughing here on that.

6 MR. HURSON: I can tell what that is.

7 THE COURT: Is requested by an individual.

8 MR. HURSON: If I may, that was simply Officer
9 Laronde's request to do the print; and at the bottom, Mr. Dorr
10 writes, "See my report." I just wanted it to be complete, so I
11 didn't --

12 THE COURT: This is basically Laronde just requesting
13 a report, and then the reference to the report. Again, I don't
14 see there is any hearsay.

15 MR. SIPPEL: I withdraw the objection, Your Honor.

16 THE COURT: Defendant's Exhibits 13, 14 are admissible
17 into evidence, and you can put them on.

18 MR. HURSON: Thank you, Your Honor.

19 (End of bench conference.)

20 THE COURT: Both exhibits will be admitted .

21 (Defendant Exhibit Nos. 13 and 14, received in
22 evidence.)

23 MR. HURSON: Mr. Thompson, I believe the screen is
24 working. Thank you.

25 BY MR. HURSON:

1 Q Now, this is the report that you completed in this case;
2 correct?

3 A That is correct.

4 Q Now, there is also -- and I am now referencing Defendant's
5 Exhibit 14 -- this page, and what we're looking at here is
6 simply Officer Laronde's submission of the gun; correct? This
7 accompanied that submission; right?

8 A Yes. This is a request that's submitted to my office for
9 me to know which property number and which complaint number to
10 pull the item from.

11 Q And then at the bottom you wrote, "See report," and what
12 you meant there was, for my results, see this report; is that
13 correct?

14 A That's correct.

15 Q Okay. And these are the only two things you authored in
16 this case; right?

17 A In this case, I believe there were -- there should be a
18 worksheet that I authored that has the exact same information
19 that's on the report.

20 Q There is a worksheet that you authored?

21 A Yes.

22 MR. HURSON: Your Honor, we may have a motion. May we
23 approach?

24 THE COURT: Approach the bench.

25 (Conference held at the bench.)

1 MR. HURSON: As you may guess, I don't have the
2 worksheet.

3 MR. SIPPEL: Your Honor, the lab worksheets are not
4 produced to us; they are not part of any investigative file or
5 any police file. So, for us to get the report -- we don't have
6 it, either.

7 MR. HURSON: Well, I don't think that's a valid
8 excuse.

9 THE COURT: The police officer has the worksheets.
10 Quite frankly, I don't know that it's any great moment,
11 Mr. Hurson.

12 MR. HURSON: It doesn't sound like it will be the
13 omission of the century.

14 THE COURT: Certainly, laughing up here about the
15 omission of the century.

16 There's no prejudice to the defendant. What are
17 you -- quite frankly, any analysis for someone who doesn't come
18 up with a latent print is going to probably have some paperwork
19 where they compare and they either do or don't come --

20 MR. HURSON: That's actually --

21 THE COURT: I don't know. I mean, the bottom line is
22 that I don't find it to be a prejudicial discovery violation.

23 Going on to the next topic, what do you proffer --

24 MR. HURSON: Actually, the issue is the comparison
25 process, but I'll be frank. I think he said it says the same

1 exact thing this thing said. If that's the case, obviously, the
2 wind is out of the sails, but --

3 THE COURT: Okay.

4 MR. HURSON: But I think it's plainly something that
5 should be discoverable. It's probably too late to strike his
6 testimony and --

7 THE COURT: I wouldn't strike his testimony, anyway,
8 Mr. Hurson. There is absolutely no basis on this record. I see
9 you're laughing, but --

10 MR. HURSON: I'm not laughing. I was just --

11 THE COURT: There is no basis to strike this witness's
12 testimony --

13 MR. HURSON: My only --

14 THE COURT: -- and to suggest that we have to, in this
15 kind of case, then produce each piece of paper with respect to
16 the expert, I mean, certainly, if you think there is something
17 there, perhaps some day the defense will start producing their
18 own handwriting and latent print, you know, fingerprint experts,
19 as opposed to just attacking the Government. But that's another
20 matter for another day. I don't believe that this is
21 particularly relevant, and I think we can move on.

22 MR. HURSON: I assume no mistrial will be granted
23 either.

24 MR. FUCHS: No basis for it.

25 (End of bench conference.)

1 BY MR. HURSON:

2 Q Okay. Mr. Dorr, you said there was one additional piece
3 that you had completed, but it says essentially what's on here?

4 A Exactly what's on there.

5 Q What's on this form, Defendant's 13, there are, at the
6 bottom, three boxes that can be checked by you when you complete
7 your examination; correct?

8 A Actually, on the bottom section that I hand check, there
9 are four boxes that I can possibly check.

10 Q Four boxes? Am I missing one? Oh, I see. I'm sorry.

11 A About halfway up is the fourth one.

12 Q You got me. That was good.

13 No Suitable Partial Latent Prints Observed/Developed,
14 that's what you checked; correct?

15 A That's correct.

16 Q And underneath it it says: Processed for Latent Prints
17 with Negative Results; correct?

18 A That's correct.

19 Q Now, you did not check Processed for Latent Prints with
20 Negative Results; correct?

21 A That's correct.

22 Q And if you had checked that that would indicate that you
23 found absolutely nothing at all, no ridge detail on this gun;
24 correct?

25 A That's correct.

1 Q But you checked the box above it saying, "I didn't find any
2 suitable partial prints"; correct?

3 A That's correct.

4 Q Now, what did you find when you analyzed this gun?

5 A Again, I couldn't tell you exactly what I found, because
6 it's been so long ago, and I've processed about 1,000 to 2,000
7 other items prior to this court testimony.

8 But in this case what I found was the presence of
9 friction-ridge skin, but I couldn't determine which surface that
10 it could have been made from, and I couldn't determine if I
11 could make any type of comparison with that friction-ridge skin.

12 Q All right. Let me break it down. Which is it? You don't
13 remember or you found some friction-ridge detail?

14 A I can tell you because of what I checked off that there
15 definitely was friction-ridge skin present on the item; but
16 there was no possible way for me to determine where that
17 friction-ridge skin came from -- a palm, a finger, any type of
18 part of the hand -- and, therefore, I couldn't make any type of
19 comparison with that friction-ridge skin.

20 Q So you did find a portion of a latent print on that gun?

21 A That's correct.

22 Q And did you lift that portion of a latent print off of that
23 gun?

24 A I made a lift and, with my magnifier, determined right then
25 and there that it wasn't a suitable print and discarded the

1 lift.

2 Q So when you made a lift, that means you actually applied
3 tape or some adhesive to that item; correct?

4 A That's correct.

5 Q And this is of course after you dusted it, so there is an
6 outline of a latent print there?

7 A That's correct.

8 Q And you lifted that off?

9 A Yes.

10 Q And you attached it to a background?

11 A A white index card, which is a lift card.

12 Q And you looked at that card, and you said, I can't make any
13 determination here?

14 A Yes.

15 Q Where is that lift card today?

16 A That card was destroyed after I determined that it was not
17 suitable.

18 Q Before you destroyed that lift card, did you show it to
19 anybody else?

20 A No, I did not.

21 Q You did not give it to any of the other examiners in your
22 office to ask them to look at it?

23 A No, I did not.

24 Q And in fact you did not photograph it?

25 A No.

1 Q You did nothing to preserve it at all?

2 A No.

3 Q So with this latent print that you lifted, you never sent
4 it to the FBI to ask them to analyze it; correct?

5 A I did not.

6 Q And you never sent it to the ATF to ask them to analyze it?

7 A No, I did not.

8 Q And certainly you didn't produce that to us to let us hire
9 our own person to analyze it, did you?

10 A Again, this lift card was destroyed right after I
11 determined that there were no suitable prints on it.

12 Q So the answer to my question is no?

13 A Is no.

14 Q Now, you have no control over how officers collect the
15 evidence at the scene; correct?

16 A Other than the latent fingerprint, the supervisor does
17 attend the in-training service that the officers go to each
18 year, and a portion of that class is to tell them how to recover
19 some items and process other types of items for latent prints.

20 Q So what you're saying is that someone in your office
21 instructs officers on how to collect evidence, but you're not
22 out there on the scene every time they do?

23 A That's correct.

24 Q And you know, though, as an expert -- and I believe you
25 used to be on an evidence collection unit; correct?

1 A I was the mobile crime lab technician.

2 Q And what does the mobile crime lab technician do?

3 A That's the unit of the lab that goes out to all the crime
4 scenes -- the homicides, the breaking and entering, the armed
5 robberies -- that collect fingerprint, DNA evidence, hair and
6 trace fibers -- all that type of evidence.

7 Q And they are called to the scene by officers who responded
8 to something; correct?

9 A That's correct.

10 Q And it's up to the officer to actually make that call and
11 ask the mobile crime lab to come out to the scene; right?

12 A Yes. It's up to the primary officer or the detective on
13 the case.

14 Q Okay. Now, as an expert in fingerprint comparison analysis
15 and recovery, you know that there are certain best methods for
16 collecting evidence to preserve fingerprints; correct?

17 MR. SIPPEL: Objection, Your Honor. May we approach?

18 THE COURT: Yes.

19 (Conference held at the bench.)

20 MR. SIPPEL: I have an objection on two grounds. (A)
21 It's outside the scope of my direct. It's also on relevancy
22 grounds. I don't see how any of this has anything to do with
23 his examination of the firearm in this case.

24 THE COURT: Where are you going with this, Mr. Hurson?

25 MR. HURSON: Where I'm going with it is that he has

1 testified that he is unable largely to recover prints. He said
2 one in one hundred times.

3 THE COURT: Right.

4 MR. HURSON: And what I'm exploring with this expert
5 on the topic is some of the reasons for that. It's directly
6 responsive to his question, if you recall, during one of the
7 many speeches, there was a reference to post-transfer factors.
8 That's exactly what I'm discussing in this line. And relevance
9 is a low bar.

10 THE COURT: All right. You may proceed. We're not
11 going to opine as to the techniques used by Baltimore City
12 Police Officers at crime scenes. It's not in his role to opine
13 that. You can explore in terms of the difficulties he has with
14 respect to latent print analysis as a result of whether it's
15 collected or not collected at the crime scene.

16 MR. HURSON: I'll tell you exactly where I'm going, is
17 simply there is a way that you can handle a gun to try your best
18 to preserve that evidence, and that probably wasn't done in this
19 or any of his cases. That's all I'm doing.

20 THE COURT: Overruled.

21 MR. HURSON: Thank you, Your Honor.

22 (End of bench conference.)

23 BY MR. HURSON:

24 Q Now, as an expert, I believe I had asked you, you know
25 there is a way -- there's best methods for preserving evidence

1 that are recovered at a scene; correct?

2 A I am not exactly sure I understand what your question is.

3 Q My question is simply this: When an officer picks up a
4 piece of evidence like that gun, there's a way that an officer
5 should do that that's more likely to preserve prints; correct?

6 MR. SIPPEL: Objection.

7 THE COURT: Sustained. Approach the bench, please.

8 (Conference held at the bench.)

9 THE COURT: That's what I just explained to you,
10 Mr. Hurson. That's not within his area of expertise. He is not
11 qualified to talk about what an officer should or should not do
12 at the scene; nor is he qualified to impose your theory as to
13 how a police officer is to react at the scene. All right?
14 That's exactly what I told you not to do.

15 MR. HURSON: I thought --

16 THE COURT: No. That's exactly what I told you not to
17 do. You are free to ask this expert witness with respect to
18 evidence collection. You are not free to ask him his opinion in
19 terms of what a police officer should or should not do. He is
20 not the least bit qualified to do that. He is not a police
21 officer at the scene of a crime, any scene of arrest. Okay?

22 I also -- so make sure you're clear, I want to make
23 sure you're clear. Again, you can ask him with respect to his
24 expertise in terms of what is the best method for collecting
25 evidence. You're not to try to linger on your theories of what

1 should or --

2 MR. HURSON: I understand.

3 THE COURT: I think you understood the first time.

4 Make sure there is no confusion.

5 MR. HURSON: Your Honor, first --

6 THE COURT: You understand?

7 MR. HURSON: Absolutely. I apologize for missing

8 the --

9 THE COURT: I don't think you missed it, I think
10 you -- Don't push the envelope here. You pushed it enough now,
11 okay?

12 MR. HURSON: Fair enough.

13 THE COURT: As I indicated to you, you are not
14 permitted to have your theory of what a police officer should or
15 should not do be imposed upon this witness who is not qualified
16 to opine as to that, nor are you qualified to opine as to that.

17 MR. HURSON: Okay. And what I was trying to ask him
18 is just, is there a way that a piece of evidence should be
19 collected versus another way.

20 THE COURT: Exactly. The question is objectionable.
21 Just ask it in terms of what -- we're just about to stop this
22 line of inquiry. I've given you a chance -- this is the third
23 time at the bench. The line of inquiry is over, Mr. Hurson,
24 because you're not getting the message up here.

25 MR. HURSON: Okay. Fair enough. Thank you.

1 (End of bench conference.)

2 BY MR. HURSON:

3 Q If a weapon that's recovered at a scene is handled with
4 bare hands, there's a good chance you could smudge a latent
5 print; correct?

6 A No. It's just as likely if they were gloved that they
7 could smudge any latents that were left on the item.

8 Q So it has no impact whatsoever that someone is wearing
9 gloves versus not wearing gloves. Is that your testimony?

10 A The only difference would be that there's a chance that the
11 second person could overlap their prints on the initial prints
12 that are left.

13 Q So it could actually affect the recovery of a latent if
14 someone uses bare hands?

15 A It could, yes.

16 Q Now, if an item is placed into a bag, for example, a
17 firearm, that process of placing an item in a bag, that can
18 affect the recovery rate; could it not?

19 A Yes. Any additional contact with that moisture that's left
20 on the first surface could transfer that moisture onto the
21 second surface or smear that moisture.

22 Q In fact, as an expert, you would know that the best way to
23 preserve prints on a firearm would be to mount that firearm onto
24 a board; correct?

25 MR. SIPPEL: Objection, Your Honor.

1 THE COURT: Is your question that the police officer
2 at the scene is to mount it on a board, Mr. Hurson?

3 MR. HURSON: I'm asking him about the best method for
4 evidence collection of a firearm, Your Honor.

5 THE COURT: At the scene?

6 MR. HURSON: Anyway, the best way to submit it. I
7 asked him about the bag. He said -- I'll withdraw the question.
8 I'll move along.

9 BY MR. HURSON:

10 Q Now, this gun came to you in a bag; correct?

11 A In a white firearms envelope.

12 Q Okay. I think you discussed moisture. Most prints, in
13 fact, most fingerprints are over 90 percent moisture-based;
14 correct?

15 A That's correct.

16 Q And moisture, as you understand, can evaporate; right?

17 A That's correct.

18 Q And that's why you have to be quick when you analyze a
19 fingerprint; right? Because you want to get to it before the
20 moisture might evaporate; right?

21 A Yes; that's correct.

22 Q And there are different ways that one can try to develop a
23 fingerprint; correct?

24 A Yes.

25 Q There's dust -- the dusting method?

1 A That would be the Bichromatic powder or magnetic powder,
2 yes.

3 Q But there are a whole host of other methods as well;
4 correct?

5 A Yes. They all look for that same area of moisture.

6 Q But, in general, the only method you used and the only
7 method you used in this case was the dusting method; correct?

8 A Yes. I applied Bichromatic powder to this firearm, and the
9 cartridges that were also recovered at the time.

10 Q How many times have you testified in federal court?

11 A In federal court, at least 20 times.

12 Q And you said, I think, on direct -- and correct me if I'm
13 wrong -- that the bulk of that testimony was explaining why you
14 didn't get any prints; correct?

15 A That's correct.

16 MR. HURSON: Court's indulgence, Your Honor.

17 (Pause.)

18 MR. HURSON: No further questions.

19 THE COURT: Thank you, Mr. Hurson.

20 Any redirect, Mr. Sippel?

21 MR. SIPPEL: No, Your Honor.

22 THE COURT: Thank you, Mr. Dorr. You're permitted to
23 step down, sir. You should not discuss your testimony with
24 anyone until this case concludes in the event you -- in the
25 unlikely event you're called back to the witness stand.

1 Thank you very much.

2 (Witness excused.)

3 Counsel want to approach the bench?

4 (Conference held at the bench.)

5 THE COURT: Is that the Government's case?

6 MR. FUCHS: Your Honor, we have the two stipulations,
7 but no further witnesses.

8 THE COURT: You have two stipulations, and then no
9 more witnesses. The Government rests?

10 MR. SIPPEL: (Nodding head.)

11 THE COURT: Is the defense calling any witnesses?

12 MS. NEWBERGER: No, Your Honor.

13 THE COURT: All right. Is the defendant going to
14 testify?

15 MS. NEWBERGER: I don't believe so.

16 THE COURT: I need to advise him out of the presence
17 of the jury. There are two stipulations, and the point is that
18 if the defendant's going to testify, I'm not going to excuse the
19 jury for lunch. If he is going to testify, then we'll need some
20 idea -- we'll deal with two stipulations. I'm not going to keep
21 having them come back in ten minutes, come back in ten minutes.

22 I'm obviously going to need to do instruction, but it
23 seems to be an easier way is just to have them excused for lunch
24 and tell them to come back for closing argument. I need to
25 flush this out. I'm going to presume that your client is not

1 going to testify.

2 MS. NEWBERGER: (Nodding head.)

3 THE COURT: Is that correct; Mr. Hurson?

4 MR. HURSON: Yeah.

5 THE COURT: What we'll do, I have the two
6 stipulations. I'll indicate that -- we'll have them -- I'll
7 have you come to the bench, I'll excuse the jury -- there's just
8 no way to do this.

9 Just in the abundance of caution, two stipulations,
10 I'm going to give them before the break and have them leave the
11 courtroom, make sure I'm satisfied that your client has been
12 advised of his rights. And then we'll excuse them for lunch.

13 So with that, we'll give the two stipulations.

14 (End of bench conference.)

15 THE COURT: Next witness or next items of evidence,
16 Mr. Fuchs?

17 MR. FUCHS: Yes, Your Honor. Thank you.

18 Your Honor, the Government has two stipulations to
19 read to the jury.

20 THE COURT: All right. Now, ladies and gentlemen,
21 this is the one exception, this is the only time, what a lawyer
22 says is evidence. What a lawyer says in opening statement and
23 in the closing argument and the nature of a question, what
24 lawyers say is not evidence. This is the one exception: If
25 there is a stipulation. That means between the parties, between

1 the Government and the defendant, there is a stipulation, and
2 this is evidence and can be accepted as evidence in the case.

3 Mr. Fuchs?

4 MR. FUCHS: Thank you, Your Honor.

5 It is agreed and stipulated between the parties that
6 on or about July 6, 2009, the Taurus, Model 94, .22 caliber
7 revolver, Serial Number TB12626, met the definition of a firearm
8 found in 18, United States Code, Section 921, because, (a), it
9 was designed to expel a projectile by the action of an
10 explosive; and, (b), it was test-fired by the Baltimore City
11 Police Department and did expel a projectile by the action of an
12 explosive.

13 THE COURT: All right. Is that marked as an exhibit
14 to be introduced into evidence, Mr. Fuchs?

15 MR. FUCHS: It will be, Your Honor.

16 THE COURT: All right. That will be Government's
17 Exhibit what?

18 MR. FUCHS: Twelve.

19 THE COURT: That will be Government's Exhibit 12.
20 That is in evidence, and there is no dispute, and that's agreed
21 to by counsel for the defendant; is that correct, Ms. Newberger?

22 MS. NEWBERGER: Correct, Your Honor.

23 (Government Exhibit No. 12, received in evidence.)

24 THE COURT: Go ahead, Mr. Fuchs.

25 MR. FUCHS: Your Honor, this will be Government's

1 Exhibit 13.

2 It is agreed and stipulated between the parties that
3 the Defendant Lewis Lucas had, prior to July 6, 2009, been
4 convicted of a crime punishable by imprisonment for a term
5 exceeding one year as defined in 18, U.S.C., Section 921, and
6 his civil rights had not been restored.

7 THE COURT: And that is a stipulation; and, again,
8 that will be accepted as evidence; is that correct,
9 Ms. Newberger?

10 MS. NEWBERGER: Yes, Your Honor.

11 (Government Exhibit No. 13, received in evidence.)

12 THE COURT: Now, ladies and gentlemen, as to that, and
13 that's Government's Exhibit 13, it is absolutely not any of your
14 concern as to what that conviction was for. The only reason
15 it's being introduced is just as a predicate offense in terms of
16 Mr. Lucas is being charged as a person who was improperly in
17 possession of a firearm in violation of a particular statute
18 based upon the fact that there was a prior conviction.

19 That's the only thing you consider that for is just
20 that is a predicate to his being charged in this case. You
21 don't need to speculate or wonder about what the conviction is
22 for. It's not the least bit important as to what it was for,
23 and you shouldn't worry about that at all or hold that against
24 him. It's just a predicate offense, a predicate element of the
25 charge here in this case.

1 Correct, Ms. Newberger?

2 MS. NEWBERGER: Yes, Your Honor.

3 THE COURT: All right. With that, that will be
4 Government's Exhibit 13. That will be introduced as well.

5 Counsel, if you'll approach the bench, please.

6 (Conference held at the bench.)

7 THE COURT: The Government rests?

8 MR. FUCHS: We do, Your Honor.

9 THE COURT: And what we'll do is we'll give the jury a
10 break right here. We will hear the Rule 29 Motion, Mr. Hurson.
11 I may get a Fourth Circuit clock out here, red and orange, in
12 terms of --

13 MR. HURSON: We try to stay out of the --

14 THE COURT: So Ms. Newberger wants to argue the
15 Rule 29.

16 MR. HURSON: I think that's part of the deal. That's
17 why I'm here.

18 THE COURT: I'm just teasing you.

19 All right. And then what we'll do is bring the jury
20 back, and I'll have gone over the advice of rights with the
21 defendant and also explain to him the instruction I'll give the
22 jury, because I'm going to print out the instructions.

23 So you can go back and formally rest, and I'll excuse
24 the jury.

25 MR. FUCHS: Thank you, Your Honor.

1 (End of bench conference.)

2 THE COURT: All right. Ladies and gentlemen, you're
3 going to take a quick break here for a minute and come right
4 back in.

5 The Government now rests; is that correct, Mr. Fuchs?

6 MR. FUCHS: That's correct, Your Honor.

7 THE COURT: All right. The Government now rests.

8 Ladies and gentlemen, you're excused now for just a
9 few minutes, about ten minutes. You'll come back in the
10 courtroom in about ten minutes. I'm going to stay up here on
11 the bench. I've got to attend to a few matters.

12 (Jury excused.)

13 All right. The Government now having rested,
14 Ms. Newberger or Mr. Hurson, do you want to address --
15 actually, I'll hear from Mr. Hurson on a Rule 29 Motion.

16 MR. HURSON: I have just a few notes.

17 THE COURT: All right. Okay.

18 MR. HURSON: Rule 29, Your Honor, we would -- first
19 and foremost, one element of the offense is proved entirely
20 through the hearsay testimony of an ATF agent, and for that --

21 THE COURT: Which element is that?

22 MR. HURSON: That would be the interstate nexus --

23 THE COURT: Right.

24 MR. HURSON: -- of the firearm. The requirement is
25 that it be proven that it affected interstate commerce. The

1 only evidence offered on that point was completely and totally
2 hearsay. That's the bulk of the defendant's motion.

3 With respect to the actual evidence heard, I would
4 submit that it's insufficient. We've heard the distance, the
5 lighting, the timing. It seems insufficient to prove that there
6 was actual possession of any firearm at all.

7 Beyond that, Your Honor, believe it or not, I will
8 submit.

9 THE COURT: Thank you very much, Mr. Hurson.

10 With respect to the other elements, there is no
11 dispute here, it's a factual question in terms of the testimony
12 of Officer Huter and Officer Laronde, with respect to what Huter
13 observed and then what Laronde found.

14 The thrust of a Rule 29 Motion by defense counsel is
15 that, with respect to the interstate nexus element, that there
16 is a hearsay factor that would essentially not satisfy the proof
17 here.

18 Under Rule 803(8), in terms of records and reports,
19 that this kind of information in terms of the firearms is not
20 within the ambit of the hearsay rule. These are not police
21 reports, field interview notes, or what have you. These are
22 clearly -- it's the expert opinion of the particular expert,
23 Mr. Kerwin, Special Agent Kerwin, indeed the weapon in this
24 case -- as I understand it, counsel -- has "Made in Brazil" on
25 the weapon itself. He has testified as an expert as to where

1 this weapon is manufactured; and, essentially, established that
2 it's not manufactured in Maryland.

3 So he's -- there is no hearsay in terms of his
4 analysis as an expert as to that. And this is not a statistical
5 summary of some sort to which some effort to bring this within
6 the *Crawford v. Washington* and the *Melendez-Diaz* would apply.
7 So the hearsay objection is noted, has been previously noted and
8 overruled.

9 And so accordingly, for those reasons, I would note
10 that under Rule 29, the standard is, if upon viewing the
11 evidence in the light most favorable to the Government, any
12 rational trier of fact could find the defendant guilty beyond a
13 reasonable doubt, the standard long set in *United States v.*
14 *Tresvant*, 677 F.2d 1018, Fourth Circuit opinion, 1982, and
15 reiterated there also in the case of *United States v. Wilson*,
16 115 F.3d 1185, a Fourth Circuit opinion in 1997. So for those
17 reasons, the Rule 29 motion is denied.

18 Now, with respect to a defense case, it's my
19 understanding that the defense is not going to call any
20 witnesses or produce any witness testimony. Is that correct,
21 Ms. Newberger?

22 MS. NEWBERGER: That is correct, Your Honor.

23 THE COURT: All right. Now, with respect to the items
24 of evidence produced by the defendant, exhibits marked for
25 identification, and those not marked, I'm going to make sure we

1 clearly go over that. For example, I know Items 13 and 14 were
2 introduced this morning. What exactly is in evidence or what is
3 the defendant proffering in evidence on the defense side?

4 MS. NEWBERGER: Your Honor, by my record, I think we
5 have utilized 14 exhibits in this case. I believe 1 through 8,
6 all of which are photographs, were admitted into evidence
7 yesterday.

8 THE COURT: All right.

9 MS. NEWBERGER: I believe Exhibit Number 11, which was
10 a photograph of Officer Huter, was also admitted into evidence
11 yesterday.

12 THE COURT: All right.

13 MS. NEWBERGER: And I believe, Your Honor today
14 admitted into evidence Exhibits 13 and 14 regarding the latent
15 print examination.

16 THE COURT: Is that consistent with your records,
17 Mr. Thompson?

18 DEPUTY CLERK: Yes, sir.

19 THE COURT: All right. Is that consistent with the
20 Government's position on this?

21 MR. FUCHS: Yes, Your Honor.

22 THE COURT: All right. There is no dispute about
23 this, so Defendant's Exhibits 1 through 8, 11, 13 and 14 are in
24 evidence. Defendant's Exhibits 9 and 10 are for identification
25 only and 12.

1 So I think that essentially we have Exhibits 1 through
2 8 are in evidence; 9 is for identification only; 10 is for
3 identification only; 11 is in evidence; 12 is for identification
4 only; and 13 and 14 are in evidence.

5 Is that correct, Ms. Newberger?

6 MS. NEWBERGER: It is, Your Honor. It's probably
7 worth noting that my recollection is that our Exhibit Number 9
8 was also made a Government's exhibit, and the Government did
9 move to have it admitted.

10 THE COURT: I was going to do that. Government's
11 Exhibit 11 and Defendant's Exhibit 9 are the same photograph of
12 the suspect. Government's Exhibit 11 --

13 So the record is clear and protected, Government's
14 Exhibit 11 was admitted over the objection of defense counsel,
15 and defense counsel did not seek to introduce Defendant's
16 Exhibit 9.

17 So your point on that --

18 MS. NEWBERGER: That's correct.

19 THE COURT: -- has been preserved for the record as
20 well, Ms. Newberger.

21 All right. With that, then, let me -- we'll be ready
22 to bring the jury back in.

23 Let me advise you of your right to testify or not
24 testify in this case. If you'll stand, please, Mr. Lucas.

25 I want to make sure you understand, sir. You have the absolute

1 right to testify. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you understand that, if you did
4 testify, you could be subject to cross-examination by Government
5 counsel; and Government counsel could question you about any
6 prior criminal record that you have. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. And by -- on the other hand,
9 if you decide not to testify in this case, I'm going to instruct
10 the jury as follows: The defendant did not testify in this
11 case. Under our constitution, he has no obligation to testify
12 or to present any other evidence, because it is the
13 prosecution's burden to prove the defendant guilty beyond a
14 reasonable doubt. That burden remains with the prosecution
15 throughout the entire trial and never shifts to the defendant.
16 The defendant is never required to prove that he is innocent.

17 And then I would continue with that instruction,
18 noting to the jury, specifically, I will tell them, you may not
19 attach any significance to the fact that the defendant did not
20 testify. No adverse inference against him may be drawn by you,
21 because he did not take the witness stand. You may not consider
22 this against the defendant in any way in your deliberations in
23 the jury room.

24 Do you understand that's how the jury will be
25 instructed as a matter of law at the conclusion of the case,

1 Mr. Lucas?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. And understanding that, have
4 you had an opportunity to talk with Ms. Newberger and Mr. Hurson
5 about whether you would or would not testify in this case?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And are you satisfied you've had a
8 sufficient amount of time to go over it with both of them?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And having discussed this matter with
11 them, let me ask you: Are you under the influence of any
12 medication or any alcoholic beverage or narcotic drug of any
13 kind this morning?

14 THE DEFENDANT: No, sir.

15 THE COURT: And are you satisfied with the performance
16 of Ms. Newberger and Mr. Hurson?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there anything you've asked them to do
19 that they've not done?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Certainly, they've done a very
22 thorough job on this matter, and they've introduced items of
23 evidence for you. And I'm just trying to verify that you're
24 satisfied with their representation, and there's nothing that
25 you've asked them to do that they've not done, is there?

1 THE DEFENDANT: No, sir.

2 THE COURT: And understanding all of that, and
3 understanding your rights, is it your desire to testify or not
4 testify?

5 THE DEFENDANT: Not testify, sir.

6 THE COURT: Not testify. That's fine, and I'll give
7 the jury that instruction.

8 Also, in terms of the matter of, for example, the
9 witnesses who you may or may not have wanted to call, no
10 witnesses have been called. That's not to suggest that they
11 should have done that, but I'm just making sure that you
12 understand that, if you wanted any witnesses to be called, at no
13 cost to you, Mr. Hurson and Ms. Newberger could submit subpoenas
14 to the clerk of the court, and the clerk would issue subpoenas
15 requiring people to come into the courtroom.

16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Once again, you're satisfied with your
19 counsel, and you've made a knowing and intelligent decision not
20 to testify; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. The Court finds that the
23 defendant is satisfied with his attorneys; that he has been
24 advised of his right to testify or not testify; and he has made
25 a knowing and voluntary and intelligent decision with respect to

1 this matter. And so that's fine, and I'll give that requested
2 instruction.

3 And then with that, just for the record, Mr. Hurson,
4 you want to renew your Rule 29 Motion on the hearsay issue --

5 MR. HURSON: Yes, sir.

6 THE COURT: -- interstate nexus?

7 MR. HURSON: Yes, Your Honor.

8 THE COURT: All right. That's preserved, and the
9 issue of the hearsay point Mr. Hurson has raised as to the
10 interstate nexus testimony as an element of the offense has been
11 preserved as well, and the Rule 29 Motion for judgment of
12 acquittal is denied for the reasons previously stated.

13 So where we are now is that we're going to excuse the
14 jury. We're going to have a charge conference here and go over
15 the instructions, and then break for lunch.

16 You may all be seated for a moment.

17 How long do you think the Government will be in
18 closing argument, the initial closing, Mr. Sippel?

19 MR. SIPPEL: No more than 15 minutes, Your Honor.

20 THE COURT: No more than --

21 MR. SIPPEL: Fifteen minutes, Your Honor.

22 THE COURT: Fifteen minutes. I thought you said 50.

23 MR. SIPPEL: I hope not, Your Honor.

24 THE COURT: I'm going to reserve 50 for Mr. Hurson on
25 the defense side -- no, I'm just kidding. Fifteen minutes.

1 How long do you think -- who is making the defense
2 closing?

3 Ms. Newberger, you are?

4 MS. NEWBERGER: I am.

5 THE COURT: How long do you think you'll be?

6 MS. NEWBERGER: Your Honor, I hope that it is going to
7 be sufficiently under 40 minutes.

8 THE COURT: Under 40? Okay. I understand.

9 And then the Government would have maybe 10 minutes
10 for rebuttal?

11 MR. FUCHS: That's sufficient.

12 THE COURT: So it seems like we're looking at about an
13 hour for closing arguments, total, including rebuttal. Does
14 that sound about right?

15 MR. FUCHS: Yes, Your Honor.

16 THE COURT: Ms. Newberger, does that sound about
17 right, total?

18 MS. NEWBERGER: Yes, Your Honor.

19 THE COURT: Okay. So I'm going to tell the jury to be
20 back here at 1:30, and we'll have a charge conference right now.
21 I don't think it should take that long on the matter of the
22 proposed instructions, but we'll have a charge conference right
23 now, and we'll tell the jury to be back ready for closing
24 argument at 1:30.

25 So bring them back in, Mr. Thompson.

1 (Jury present.)

2 DEPUTY CLERK: Jurors are all present.

3 THE COURT: You may be seated.

4 The Government has now rested, and the items of
5 evidence for the defense, specifically Defendant's Exhibits 1
6 through 8, 11 and 13 and 14 are now in evidence.

7 Are there any -- is there any further evidence or
8 witnessed to be called by the defense? Ms. Newberger?

9 MS. NEWBERGER: No, Your Honor.

10 THE COURT: All right. The defense rests?

11 MS. NEWBERGER: Yes, Your Honor.

12 THE COURT: All right. Is there any rebuttal by the
13 Government?

14 MR. FUCHS: No, Your Honor.

15 THE COURT: No rebuttal.

16 Ladies and gentlemen, that concludes the case. We
17 are going to be ready for closing arguments. You're going to be
18 given a little bit longer time for lunch so we can get ready for
19 the closing arguments in the case and some matters I must attend
20 to. So you're excused until 1:30, and then at 1:30 you'll be
21 back in here, and at 1:30 we'll have closing arguments.

22 The total of closing arguments -- both the Government
23 and the defendant, as well as rebuttal by the Government --
24 should take a total of no more than maybe an hour. Then I'll
25 instruct you on the law, and then you'll begin with your

1 deliberations.

2 So with that, you're excused for lunch until 1:30.

3 Thank you very much.

4 (Jury out.)

5 All right. You all may be seated.

6 We have one set for each side of draft of
7 instructions. Then I've got one I think needs to be added in.

8 Let me go over the -- in terms of the jury's
9 attentiveness, role of the Court, role of the jury, jurors'
10 obligations, Government is a party, conduct of counsel, improper
11 considerations, sympathy, indictment is not evidence,
12 presumption of innocence, and burden of proof, all of those I
13 think are fairly boilerplate. If you'll look at those and see
14 if you have any objections as to those. They are Instructions
15 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, presumption of innocence.

16 Any objection by the Government to those?

17 MR. FUCHS: No, Your Honor.

18 THE COURT: Any objection by the defense?

19 MS. NEWBERGER: I'm sorry, Your Honor. I'm a little
20 bit slow.

21 THE COURT: That's okay. Take your time. I don't
22 mean to rush you.

23 MS. NEWBERGER: No, Your Honor. Just for the record,
24 to the extent that any of the instructions we objected to
25 previously, can we just preserve for the record?

1 THE COURT: What I'll do is I'll note whatever
2 objection -- let me go back to that.

3 What I'll do is, you have filed your objections. Just
4 so it's clear, you have previously -- I'm not sure if that's a
5 docket number or not. You have additions or objections or
6 modifications or corrections to Government's proposed jury
7 instructions as to Number 5.

8 MS. NEWBERGER: That's right, Your Honor.

9 THE COURT: You --

10 MS. NEWBERGER: And --

11 THE COURT: Instruction number --

12 MS. NEWBERGER: It was fixed. It was corrected, Your
13 Honor.

14 THE COURT: Instruction Number 5 --

15 MS. NEWBERGER: It was just a word change that was
16 requested, and it was made. "Crimes," in what the Government
17 submitted, it was plural; and it has been changed to a singular
18 "crime."

19 THE COURT: "It is equally as important to the
20 defendant who is charged with a serious crime."

21 MS. NEWBERGER: Yes, that's correct.

22 THE COURT: So you don't have any objection then to
23 Number 5?

24 MS. NEWBERGER: No. But I renew our objection to the
25 sympathy instruction, which is Instruction Number 8.

1 THE COURT: All right. Number 8, I think it's
2 routinely given by me, in terms of just making sure the jury
3 just judges the case on the evidence, and your objection is
4 noted to Number 8, and it will be given.

5 Then requested number -- we're up to Number 12 on
6 specific investigative techniques.

7 Let me just note that I did not give -- I had
8 pulled -- we're up now -- we've gone through the first ten
9 instructions. Before we get to specific investigative
10 techniques not required, that instruction, I had originally
11 thought it was unnecessary to give the Government's Requested
12 Instruction Number 11, variance in dates. I didn't really
13 think, based on the evidence I heard yesterday, that was really
14 a topic. But in light of the cross-examination of the July 6
15 and the mistake on July 7, I am going to go ahead and give that
16 instruction, Ms. Newberger.

17 MS. NEWBERGER: That's fine, Your Honor. But, just as
18 a preview, I'm not going to argue that there is any question as
19 to when it actually occurred. It's just a reflection of the
20 type of mistakes that were made.

21 THE COURT: I'm going to insert -- Government's Number
22 11 will be pulled back out, and it will be inserted before
23 specific investigative techniques, just in case there is some
24 confusion on that. That's really not an issue here, but I'm
25 going to insert that. So that -- Government's Requested

1 Number 11 will go back in just before "specific investigative
2 techniques not required."

3 As to the specific investigative techniques not
4 required, the Government -- defense has noted the objection as
5 to that, and your objection is noted, but that is going to be
6 given. It's the boilerplate. It's verbatim from Sand and
7 Siffert Modern Federal Jury Instructions; and I think, in light
8 of the cross-examination of the Government witnesses, and
9 particularly of the expert witness on fingerprints this morning,
10 that that's an appropriate instruction. But your objection to
11 that is noted, and I will give the exact boilerplate, "Specific
12 investigative techniques not required."

13 Now, as to what's now marked Number 12, Direct and
14 Circumstantial Evidence; Testimony, Exhibits, and Stipulations;
15 Questions Not Evidence; Stipulation; and then the Improper
16 Consideration of Defendant's Right Not to Testify, the
17 instruction I've already gone over with Mr. Lucas this morning,
18 that the defendant did not testify in this case, the matter of
19 inference defined.

20 Are there any objections by the Government as to those
21 instructions?

22 MR. FUCHS: No, Your Honor.

23 THE COURT: By the defense?

24 MS. NEWBERGER: No, Your Honor.

25 THE COURT: All right. So we're up to number of

1 witnesses and uncontradicted testimony. Again, boilerplate
2 witness credibility. I always note my own objection to it,
3 because it's unconscionably long, but I have not been able to
4 find a way to limit it, so --

5 Any objections by the Government or the defense to
6 those two instructions?

7 MR. FUCHS: None by the Government, Your Honor.

8 THE COURT: Ms. Newberger, as my current Draft
9 Number 18 and Number 19?

10 MS. NEWBERGER: No, Your Honor.

11 THE COURT: Okay. And just for the record, by the
12 way, so it's clear, you have noted in your submission, the
13 matter of what is now my Draft Number 14, the Questions Are Not
14 Evidence. And, again, that's a boilerplate instruction from
15 Sand and Siffert Modern Federal Jury Instructions 5-3:

16 "I remind you that a lawyer's questions to a witness
17 is not evidence. At times a lawyer's cross-examination may have
18 incorporated into a question a statement that assumes certain
19 facts to be true, and asks the witness if the statement was
20 true. If the witness denies the truth of the statement, and if
21 there is no evidence in the record proven the assumed fact is
22 true, then you may not consider the fact to be true simply
23 because it was contained in the lawyer's question. If the
24 witness answers the question affirmatively, then the facts
25 asserted in the question are evidence. In short, questions are

1 not evidence. Answers are."

2 I think that covers your objection, Ms. Newberger.

3 MS. NEWBERGER: It does, Your Honor.

4 THE COURT: We've added that in. You requested that I
5 put that in there. We've made that change.

6 So we're now, I think, up to Draft Number 20, Interest
7 in Outcome; and this is -- I don't know that there's --

8 There's no objection by the Government, is there,
9 Mr. Fuchs?

10 MR. FUCHS: There isn't.

11 THE COURT: There is no objection by the defense, is
12 there, Ms. Newberger, as to that?

13 MS. NEWBERGER: No.

14 THE COURT: Okay. Now, then, we have the matter of
15 the Government's Requested Number 23, and I didn't give it
16 verbatim, I believe, but I've got, it's my Draft Number 21,
17 Consciousness of Guilt From Flight, and the defense has objected
18 as to that. This instruction reads, specifically:

19 "You have heard evidence that Defendant Lewis Lucas
20 attempted to flee after he believed he was about to be arrested
21 for the crime for which he is now on trial. If proved, the
22 flight of a defendant after he knows he is to be accused of a
23 crime may tend to prove that the defendant believed he was
24 guilty. It may be weighed by you in this connection together
25 with all other evidence. However, flight may not always reflect

1 feelings of guilt; moreover, feelings of guilt which are present
2 in many innocent people do not necessarily reflect actual guilt.
3 You are specifically cautioned that evidence of flight of a
4 defendant may not be used by you as a substitute for proof of
5 guilt. Flight does not create a presumption of guilt, whether
6 or not evidence of flight does show that the defendant believed
7 he was guilty, the significance of any to be given to the
8 defendant's feelings in this matter are for you to determine."

9 And that is the modified version of Sand and Siffert,
10 and we will not have -- there won't be any case citations to
11 these. When the jury gets my instructions, they don't have case
12 citations.

13 I think I need to tweak this a little bit before I
14 hear from counsel.

15 "You have heard evidence that Defendant Lewis Lucas
16 attempted to flee after he believed he was about to be arrested
17 for the crime for which he is now on trial."

18 That doesn't fit here in this case. There was no
19 indication of that. There is evidence that he fled, but there
20 is no indication he was fleeing specifically for any reason. So
21 I'm going to take out the language after "he believed that he
22 was about to be arrested for the crime for which he is now on
23 trial." The first sentence will be, "You have heard evidence
24 that Defendant Lewis Lucas attempted to flee." Period. Then
25 the second sentence will be, "If proved, the flight of a

1 defendant, after he knows he is to be accused of a crime --" I
2 don't know that that really fits.

3 MS. NEWBERGER: No.

4 THE COURT: And I'm taking that out. It just -- the
5 sentence will be: "If proved, the flight of a defendant --" it
6 seems to me, on the facts of this case, to have this makes
7 sense, this should be worded as follows:

8 "If proved, the flight of a defendant may tend to
9 prove that the defendant believed that he was guilty of some
10 offense." Period. "It may be weighed by you in this connection
11 together with all other evidence."

12 Is there any objection by the Government?

13 MR. FUCHS: No, Your Honor.

14 THE COURT: Ms. Newberger, you know, you are nodding
15 in agreement. Is there any objection to that first paragraph?

16 MS. NEWBERGER: Your Honor, I renew my general
17 objection to the instruction being given; but, if the Court is
18 going to give it, I like it better with the modifications you've
19 suggested.

20 THE COURT: Okay. I'll make the modifications.
21 Clearly, what's involved here is the flight of the defendant in
22 this case, and it's an element of -- it's a matter -- not an
23 element. It's what occurred in the case, so there has to be an
24 instruction on it, but I'm modifying it so the first paragraph
25 will read:

1 "You've heard evidence that the Defendant Lewis Lucas
2 attempted to flee. If proved, the flight of a defendant may
3 tend to prove that the defendant believed that he was guilty of
4 some offense." Period. "It may be weighed by you in this
5 connection together with all other evidence."

6 All right. That's the first paragraph.

7 Then the second paragraph, I think we then get into
8 the boilerplate.

9 "However, flight may not always reflect feelings of
10 guilt. Moreover, feelings of guilt, which are present in many
11 innocent people, do not necessarily reflect actual guilt. You
12 are specifically cautioned that evidence of flight of a
13 defendant may not be used by you as a substitute for proof of
14 guilt."

15 Any objection by the Government as to that second
16 paragraph?

17 MR. FUCHS: No, Your Honor.

18 THE COURT: Any objection to the second paragraph,
19 Ms. Newberger?

20 MS. NEWBERGER: No.

21 THE COURT: All right. And then finally, the third
22 paragraph: "Flight does not create a presumption of guilt.
23 Whether or not evidence of flight does show that the defendant
24 believed that he was guilty --" and I think we should add in
25 here, again, to be consistent, "of some offense" -- "and the

1 significance of any to be given to the defendant's feelings in
2 this matter are for you to determine."

3 Any objection by the Government?

4 MR. FUCHS: No, Your Honor.

5 THE COURT: By the defense?

6 MS. NEWBERGER: Again, Your Honor, I like it better
7 with the alteration, but I still renew our objection.

8 THE COURT: The reason I'm making the alteration,
9 Ms. Newberger, is I'm just trying to note that a person may feel
10 they're guilty of some offense. It doesn't necessarily mean
11 that they're guilty of possession of a firearm or anything else.
12 It may be suspicions of a police officer, it maybe whatever. So
13 I think that's -- this has been modified appropriately.

14 Did you get all that, Justin? Are you with me on
15 that?

16 Okay. That will be modified as such.

17 MS. NEWBERGER: Your Honor?

18 THE COURT: Yes, Ms. Newberger.

19 MS. NEWBERGER: Just for the record, the concern that
20 we have with this instruction is not only is there an issue as
21 to why he thought he was being stopped, obviously, but there's
22 also the issue of whether he knew that they were in fact police
23 officers that he was fleeing from, and that instruction
24 essentially presumes that he understood them to be.

25 THE COURT: Well, I don't know that that's -- there is

1 testimony by the police officers as to exhibiting their badges,
2 and the issue of the wearing of the vest. There is absolutely
3 no evidence of the -- you're certainly free to attack, in terms
4 of how the -- what they did or did not do in terms of showing
5 that they were police officers. There isn't any evidence in the
6 case as to a lack of knowledge that they were police officers.
7 You're free to challenge whether or not they sufficiently
8 exhibited that they were police officers.

9 I don't know that -- your objection is noted in that
10 regard, but there is just no evidence on that before the Court
11 that would justify changing that instruction, Ms. Newberger.
12 But your objection is noted as to that, as well as to your
13 objection to any instruction on consciousness of guilt from
14 flight.

15 Then expert witness, generally, any objection by the
16 Government?

17 MR. FUCHS: No, Your Honor.

18 THE COURT: By the defense?

19 MS. NEWBERGER: No, Your Honor.

20 THE COURT: All right. And then law enforcement
21 witness, any objection by the Government?

22 MR. FUCHS: No, Your Honor.

23 THE COURT: By the defense?

24 MS. NEWBERGER: No, Your Honor.

25 THE COURT: All right. And then we have introduction

1 to the charge. I don't send the grand jury indictment back in.
2 I just summarize that in my Draft Number 25.

3 "Count 1 of the indictment charges --"

4 I think really it probably should be worded, "this is
5 a one-count indictment," to clarify, there is only one count.

6 Do you have any objection to that, Mr. Fuchs?

7 MR. FUCHS: No, Your Honor.

8 THE COURT: Ms. Newberger?

9 MS. NEWBERGER: (Shaking head.)

10 THE COURT: All right. "This one-count indictment
11 charges the defendant with possession of a firearm that traveled
12 in interstate or foreign commerce, if having been convicted of a
13 crime punishable by more than one year. Count 1 of the
14 indictment reads as follows:

15 "On or about July 6, 2009, in the District of
16 Maryland, the Defendant Lewis Kevin Lucas, having been convicted
17 of a crime punishable by imprisonment for a term exceeding one
18 year, did knowingly possess a firearm; to wit: A Taurus, Model
19 94, .22 caliber, bearing Serial Number TB12626N, and affecting
20 commerce, the relevant statute on this subject is Title 18,
21 United States Code, Section 922(g), which provides in pertinent
22 part, it shall be unlawful for any person who has been convicted
23 in any court of a crime punishable by imprisonment for a term
24 exceeding one year to possess, or to possess in or affecting
25 commerce, any firearm or ammunition." And that will be given to

1 the jury. And then the elements of the offense --

2 MR. FUCHS: Your Honor, I'm sorry to interrupt.

3 THE COURT: Yes.

4 MR. FUCHS: With respect to Instruction Number 25, in
5 that first sentence, it might be more clear if it was "by more
6 than one year imprisonment." I'm not sure if it's --

7 THE COURT: That's fine, yes, by more than one year
8 imprisonment.

9 And we're ready for the elements of the offense.

10 "The Government must prove each of the following
11 elements beyond a reasonable doubt to sustain its burden of
12 proof that the defendant is guilty on Count 1: "First, that the
13 defendant was convicted in any court of a crime punishable by
14 imprisonment for a term exceeding one year as charged, and if
15 the state has not restored the defendant's civil rights
16 following that conviction;

17 Second, that the defendant knowingly possessed a
18 firearm as charged; and,

19 Third, that the possession charge was in or affecting
20 interstate commerce."

21 Any objections by the Government or defense as to
22 that?

23 MR. FUCHS: No, Your Honor.

24 THE COURT: Ms. Newberger, any objection as to that?

25 MS. NEWBERGER: No, Your Honor.

1 THE COURT: All right. And then we're at the first
2 element, the defendant's prior conviction.

3 "The first element the Government must prove beyond a
4 reasonable doubt," et cetera, et cetera. "The parties have
5 stipulated; that is, agreed --" in the second paragraph "-- that
6 the Defendant Lewis Lucas was convicted of a crime, and that
7 this crime was punishable by imprisonment for a term exceeding
8 one year. It also has been stipulated that this conviction
9 occurred prior to the time the defendant is alleged to have
10 possessed a firearm, and his civil rights have not been
11 restored."

12 And then I reiterate what I've already done when this
13 evidence came in.

14 "I instruct you in this connection that the prior
15 conviction that is an element of the charge here and is not
16 disputed can only to be considered by you for the fact that it
17 exists and nothing else." And then I continue on with that.

18 Any objection by the Government?

19 MR. FUCHS: No, Your Honor.

20 THE COURT: Defense?

21 MS. NEWBERGER: No, Your Honor.

22 THE COURT: All right. And then the second element,
23 possession of a firearm. I've just basically taken Sand and
24 Siffert, the form. I did take out the matter of joint
25 possession. That made no sense in this case. There is no issue

1 of joint possession.

2 MS. NEWBERGER: Thank you.

3 THE COURT: Any objection by the Government to this?

4 MR. FUCHS: No, Your Honor.

5 THE COURT: To the defense?

6 MS. NEWBERGER: Your Honor, I'm just reading --

7 THE COURT: All I did was take the form Sand and
8 Siffert, Ms. Newberger, but I took out the one paragraph about
9 also the defendant can be guilty of joint possession. That made
10 no sense in this case.

11 MS. NEWBERGER: Right. And I'm just noticing that
12 there is no mention of the defendant having been guilty of a
13 felony, which I think was in the instructions proposed by the
14 Government.

15 THE COURT: There is just -- I'm sorry. We've already
16 mentioned the first element, the prior conviction.

17 MS. NEWBERGER: No. For some reason --

18 THE COURT: I'm looking at Draft Number 28, Possession
19 of a Firearm. Just the possession. The second of the three
20 elements.

21 MS. NEWBERGER: Yes. It's fine, Your Honor.

22 THE COURT: All right. Okay. And then we've got the
23 third element, firearm affecting commerce, and that's just a
24 boilerplate as well. Perhaps some day it will be modified by
25 Mr. Hurson on this issue, but I am not sure --

1 MR. HURSON: It will, Your Honor. I will not rest
2 until I --

3 THE COURT: I'm teasing you, Mr. Hurson.

4 If we get to that honor, Ms. Newberger, you can stop
5 and Mr. Hurson can argue on that point and you can --

6 MR. HURSON: Tag team.

7 THE COURT: All right. And then duty to consult, the
8 need for unanimity, boilerplate. And then punishment, I have a
9 boilerplate instruction here on just punishment, but that's
10 really not something that the jury should consider.

11 I'm not giving the proposed Government Instruction
12 Number 27, Purpose of the Statute. There has been an objection
13 by the defendant as to that. I'm not giving the purpose of the
14 statute instruction.

15 Then we have, finally, the communications with the
16 Court, upon returning to the jury room. As I may have indicated
17 to you before, generally, unless I think there is some reason
18 not to, I intend to just appoint Juror Number 1 as the
19 foreperson. And looking here at the jury panel, looking at my
20 notes from yesterday, I think two of the -- two or three of the
21 jurors had one criminal trial and one civil trial. I am just
22 inclined to appoint Juror Number 1 as the foreperson.

23 Is there any objection by the Government?

24 MR. FUCHS: No, Your Honor.

25 THE COURT: By the defense?

1 MS. NEWBERGER: No, Your Honor.

2 THE COURT: All right. We'll just pick Juror
3 Number 1, who will be the foreperson. And then the verdict form
4 is basically: "How do you find the Defendant Lewis Lucas as to
5 Count 1, possession of a firearm after having been previously
6 convicted by a crime punishable by more than one year
7 imprisonment? Not guilty or guilty." It's just a checkmark.

8 Any objection by the Government?

9 MR. FUCHS: Your Honor, I think it should be changed,
10 "having been previously convicted of a crime."

11 THE COURT: Yes. I'm sorry. "Convicted of a crime."
12 Thank you, Mr. Fuchs.

13 "Of a crime punishable by more than one year
14 imprisonment." Just not guilty or guilty.

15 Any objection by the Government?

16 MR. FUCHS: No, Your Honor.

17 THE COURT: By the defense?

18 MS. NEWBERGER: Your Honor, just in keeping with what
19 we discussed further, it might just be less confusing to the
20 jury if we remove "Count 1."

21 THE COURT: All right. "How do you find the
22 defendant --"

23 MS. NEWBERGER: I mean, at the top where it just says
24 "Count 1."

25 THE COURT: I see. Okay.

1 MS. NEWBERGER: I don't think there really needs to be
2 a reference to Count 1.

3 THE COURT: I got you. Just, "How do you find the
4 defendant --" I guess it would be -- "How do you find the
5 Defendant, Lewis Lucas, as to the charge..."

6 Do you agree with that, Mr. Fuchs?

7 MR. FUCHS: That's fine, Your Honor.

8 THE COURT: All right. "As to the charge," and we
9 won't put parens around it. We'll take the parens out. It will
10 be: "How do you find the Defendant Lewis Lucas as to the charge
11 of possession of a firearm after having been convicted of a
12 crime punishable by more than one year imprisonment? Not guilty
13 or guilty."

14 Any objection by the Government?

15 MR. FUCHS: No, Your Honor.

16 THE COURT: By the defense?

17 MS. NEWBERGER: No, Your Honor.

18 THE COURT: Okay. Any further issues from the point
19 of view of the Government on these instructions?

20 MR. FUCHS: No, Your Honor. Thank you.

21 THE COURT: Anything further from the point of view of
22 the defense?

23 MS. NEWBERGER: No. Only, Your Honor, just to
24 clarify, I believe you said at the pretrial conference that you
25 instruct after closing.

1 THE COURT: Yes, I do. I will have copies of these
2 instructions, obviously. We will have them finalized for you
3 during the lunch hour. When you get back here, when we start at
4 1:30, you will have these instructions on your tables. You are
5 free to make reference to them. Just note that Judge Bennett is
6 going to instruct you. It's his instructions that control.
7 He's going to instruct you as follows, as I submit, and you're
8 free to address my instructions, and I will instruct them at the
9 conclusion of the closing argument.

10 Okay. Anything further from the point of view of the
11 Government?

12 MR. FUCHS: No, Your Honor.

13 THE COURT: Anything further from the point of view of
14 the defendant?

15 MS. NEWBERGER: No, Your Honor.

16 THE COURT: All right. Ms. Newberger, to the extent
17 that you have filed your objections to the Government's
18 requested instructions, to the extent that my instructions in
19 any way -- I think mine are separate from those, but you
20 preserve those for the record, in the event that there is any
21 question about that. You've preserved your objection as to
22 those instructions that you wanted that were not given as you
23 already filed.

24 MS. NEWBERGER: Thank you, Your Honor.

25 THE COURT: So with that, I think we are ready; and,

1 as always, before your closing arguments, you all enjoy a nice,
2 leisurely lunch.

3 Actually, Mr. Hurson is the one who is going to have
4 the most relaxed lunch.

5 MR. HURSON: I would think so.

6 THE COURT: We're finished now, and we'll start at
7 1:30 with closing argument. And we'll just use the same podium
8 as we did yesterday and have the same microphone set up.

9 So with that, we'll stand in recess until 1:30.

10 (Luncheon recess.)

11 THE COURT: Good afternoon, everyone. Sorry to keep
12 you waiting.

13 Okay. Are we ready to bring the jury in and proceed
14 with closing argument?

15 MR. FUCHS: Yes, Your Honor.

16 THE COURT: Ready from the defense point of view?

17 MS. NEWBERGER: Yes, Your Honor.

18 (Pause.)

19 (Discussion off the record.)

20 DEPUTY CLERK: Jurors all present.

21 THE COURT: Thank you, Mr. Thompson.

22 Good afternoon, everyone, and we're ready to -- we are
23 ten minutes behind schedule. We're all set to go now, and we're
24 ready to proceed with the closing argument by counsel.

25 First for the Government, Mr. Sippel?

1 MR. SIPPEL: Thank you, Your Honor.

2 Good afternoon, ladies and gentlemen of the jury.

3 During these short two days, the Government has proved to you
4 that on July 6, 2009, Lewis Lucas, the defendant, was in
5 possession of a loaded firearm after having been convicted of a
6 crime punishable by more than one year in prison.

7 As you heard, after a brief pursuit, Officer Laronde
8 recovered a loaded firearm along the path of the foot chase, and
9 after Officer Huter observed the defendant toss that firearm
10 along the pathway. There's no question as to the defendant's
11 guilt. It really is that simple.

12 At the Government's opening statement, you were
13 informed that the Government must meet three elements to sustain
14 its burden of proof in this case.

15 First, that the defendant has a prior conviction of a
16 crime punishable by more than one year of imprisonment;

17 Second, that the defendant was in possession of the
18 subject firearm; and,

19 Third, that that firearm traveled in interstate or
20 foreign commerce.

21 Let's go over those elements. Go over the first and
22 third, briefly.

23 As to the first element, we've heard that the parties
24 have stipulated that prior to July 6, 2009, the defendant had
25 been convicted of a crime punishable by more than one year in

1 prison and his civil rights had not been restored. That fact is
2 in evidence, and you're free to accept it as if it were
3 presented by live testimony.

4 Let's jump down to the third element.

5 The third element has to do with the interstate nexus.
6 You heard from Special Agent Dan Kerwin of the department -- I'm
7 sorry -- Bureau of Alcohol, Tobacco, Firearms, and Explosives;
8 and Special Agent Kerwin told you that he had actually reviewed
9 this firearm, analyzed it, and determined that it was
10 manufactured in the country of Brazil. And, most notably, what
11 he informed you was that, stamped right here on the weapon, it
12 says, "Made in Brazil." But he didn't stop his analysis there.
13 He checked a text, The Blue Book of Gun Values, and learned
14 that, in fact, Taurus firearms are manufactured in Brazil and in
15 Florida.

16 Special Agent Kerwin also told you that at no point
17 had any Taurus brand firearms ever been manufactured in the
18 state of Maryland. Therefore, he opined that that firearm, the
19 Taurus firearm that was recovered on July 6th, 2009, had crossed
20 state lines; meaning, it had crossed the borders of Maryland,
21 prior to its recovery inside the state of Maryland. Therefore,
22 it affected interstate commerce. In this case you can also
23 argue that it affected foreign commerce, because it traveled
24 from Brazil to Maryland or inside the United States prior to its
25 actual recovery in Maryland.

1 The remaining issue for you to decide is whether the
2 defendant possessed this firearm, this very firearm, on July 6,
3 2009.

4 Now, I'm going to take you back to yesterday, when the
5 defense presented its opening statement to you. You were told
6 that the Government's case was a story, and it was extra
7 difficult because it was based on circumstantial and other
8 not-so-strong evidence.

9 Well, you've now heard all of the testimony in this
10 case firsthand from all the witnesses that the Government has
11 prepared to bring to you.

12 What the defense wants you to do is to check your
13 common sense at the door. They want you to be distracted. They
14 want you to focus, not on the facts of this case, but on other
15 matters that have no bearing, no bearing at all, on whether the
16 Defendant Lewis Lucas possessed this firearm on July 6, 2009.

17 Now, let's walk through a little bit of that evidence.

18 Officer Huter took the stand under oath and told you
19 that on July 6, 2009, him and Officer Laronde were on patrol.
20 They're working the 6:00 p.m. to 2:00 a.m. shift, and they were
21 on the lookout for a particular individual, but that's not the
22 sole purpose why they were out. They were out on patrol, but
23 they had been notified about this particular individual. That
24 picture is admitted into evidence.

25 You should pay close attention to that photograph.

1 Note the remarkable similarity between that photograph and the
2 defendant. As you heard Officer Huter and Officer Laronde
3 state, both the person in the photograph and the defendant both
4 had cornrow dreadlocks. They both had mustaches. According to
5 them, they were medium built.

6 Officer Laronde told you he didn't focus so much on
7 the height and weight, but focused more on the picture, what the
8 person looked like.

9 Officer Laronde also told you that, as they were
10 patrolling that 2700 block of Wilkens Avenue, as they turned the
11 corner off of Brunswick onto Wilkens Avenue, he spotted --
12 spotted an individual who he thought looked like the person in
13 the photograph. Made a U-turn and stopped along the side of the
14 street.

15 Officer Huter then got out of his vehicle. Remember,
16 it's an unmarked car. Officer Laronde told you that the vehicle
17 had a light bar and siren, but at that point was not activated.

18 Officer Huter got out of the vehicle. His
19 uncontroverted testimony was that he had his badge displayed
20 right here for everyone to see. He also had his gun holstered
21 on his hip. He also had a vest, a bulletproof vest. He told
22 you here that the bulletproof vest was over the top his T-shirt.
23 There's no doubt that Officer Huter was displaying indicia that
24 he was a police officer.

25 He approached the defendant and said, Hey, can I talk

1 to you for a minute? Didn't run up and grab him. Didn't try to
2 chase him. Just said, Hey, can I talk to you for a minute? And
3 what was the defendant's reaction? Who? Me? Who? Me? And
4 started to back away from Officer Huter. And then ultimately
5 checked his waistband, skipped, turned, and took off, which led
6 us on the pursuit.

7 Officer Huter testified that he chased the defendant
8 across Wilkens Avenue and across the vacant lot and down
9 Brunswick Street into that alleyway.

10 Officer Laronde told you that he followed almost
11 parallel -- I'm sorry -- or alongside -- yeah -- parallel with
12 them, with his lights activated and his siren on. Did the
13 defendant stop? No, he did not. Do you think he knew that the
14 police were chasing him?

15 He led Officer Huter into that alleyway. Officer
16 Huter said along the street it was well lit. No need for a
17 flashlight, but he had his flashlight, because it was 2:00 a.m.
18 Remember, 2:00 a.m. in an area well known to these officers to
19 be an open-air drug market. So he grabbed that flashlight, took
20 off, chased the defendant down that alleyway.

21 Now, defense is going to have you believe that that
22 alleyway was pitch black dark. Couldn't see back there. But we
23 know otherwise, because we know that both officers said, yes,
24 that alleyway was dark, but there were sufficient lighting,
25 sufficient lights adjacent to that alley in the commercial lot,

1 the Ryder lot, and the street. So they said that that light
2 flowed into that alleyway. Still dark, but enough -- Officer
3 Laronde said he could still see; Officer Huter could see the
4 defendant, but his flashlight helped.

5 Officer Huter tells you the really -- the juicy part
6 of the story. Chases the defendant into the alleyway. The
7 whole time he's chasing him, what did Officer Huter tell you?
8 He wasn't running like a person would regularly run, both arms
9 pumping. Officer Huter told you both of his arms were pumping.
10 That's how fast he was running, as hard as he could to catch up
11 with the defendant.

12 The defendant didn't run like that. The defendant had
13 his right hand holding something in the front of his waistband,
14 until they hit that corner.

15 Officer Huter told you, the defendant slowed down,
16 slowed down to make that turn; and, as he did, Officer Huter
17 observed him throw something, a dark object, what he believed
18 was a gun, throw it. He heard the thud and shortly, within
19 seconds, he was able to catch the defendant, wrestle him to the
20 ground; and, after a brief struggle, was able to get handcuffs.

21 Then within moments, Officer Laronde shows up. What
22 does Officer Huter tell him? What's the first thing that he
23 tells him? Gun. Gun over there.

24 Officer Laronde tells you, he has his flashlight; he
25 shines it; and in less than a minute, less than a minute, he

1 finds this firearm.

2 Now, pay close attention and remember what Officer
3 Laronde told you about this firearm. Both officers admitted to
4 you that, compared to the photographs that have been admitted
5 into evidence, the brush was a little thicker, a little fuller,
6 but this gun wasn't under that brush. This gun was on top, and
7 you can see. It's not rusted. The officer testified it wasn't
8 dirty. Nothing in the chamber, in terms of dirt or rust. It
9 was in the same good condition as it is now.

10 Officer Laronde indicated that meant to him that this
11 firearm had not been laying there for a very long time. Again,
12 it's not buried under the brush. It's not stashed under the
13 brush. It's not hidden by the brush. It's on top of the brush.
14 Shined his flashlight, within -- under a minute, boom, there it
15 is, found it sitting there.

16 Officer Huter told you that, when he saw the gun, it
17 matched what he saw in the defendant's hand. Again, he wasn't
18 embellishing anything. Officer Huter told you, wasn't sure what
19 was in the defendant's hand; but, when he saw this, he said,
20 yes, this was the same size, color, resembled what he saw the
21 defendant pull out and toss along the chase path.

22 At that point the defendant was placed under arrest.
23 He was later identified as Lewis Lucas. Police officers learned
24 he was not the suspect that they were looking for. At that
25 point it doesn't matter, because he's found with a firearm, and

1 they were -- they determined, just like the testimony presented
2 to you today, that he was prohibited from possessing a firearm.

3 Based on these facts, the Government has proven beyond
4 a reasonable doubt that the defendant possessed a firearm on
5 July 6, 2009.

6 During the defendant's closing argument, the
7 Government anticipates that you're going to hear the defense
8 focus on issues that have no bearing on the facts of this case.
9 You heard a lot of it during trial. The defense is going to
10 have you focus away from the facts, just like they did during
11 trial. Focus away from the facts.

12 Why do they want you to focus away from the facts?
13 Because the facts are bad for the defendant. You focus on what
14 you can blow a lot of smoke and mirrors, and a lot of confusion,
15 and stay away from the facts, because the facts in this case are
16 bad for the defendant.

17 So let's go through some of the things that the
18 defense are likely to talk about.

19 They're probably going to tell you that the defendant
20 ran because he didn't know that Officer Huter was a police
21 officer. Again, defense wants you to check your common sense at
22 the door and ignore Officer Huter's testimony.

23 Officer Huter got out of the car. Yes, he's dressed
24 in plain clothes. His badge was displayed right on his hip.
25 You saw Officer Laronde's badge. About that tall, and it's

1 gold, and it's gold for a reason. Why is it gold for a reason?
2 Because it shimmers and shines, whether it's light, dark, or in
3 between. He also had a gun holstered on his hip and a
4 bulletproof vest.

5 Now, if that's not enough to convince somebody that
6 you're a police officer, when Officer Laronde pursued, after the
7 defendant took off and led Officer Huter on the chase, he
8 indicated that he put on the light bar and the siren. Did the
9 defendant stop then? Did the defendant say, Hey, it's the
10 police, I should stop? No, he didn't. He kept running.

11 What you should ask yourself is why did he keep
12 running?

13 The second issue, and this was brought out in the
14 defense's opening statement, is that we're presenting a story;
15 we're presenting a story to you. You may remember the defense
16 lawyer saying that to you. This is the Government's story.

17 This isn't a story. You heard officers and expert
18 testimony under oath in front of you, the jury, the Judge, all
19 the lawyers in this courtroom testify as to what happened.

20 The defense wants to infer or have you infer, imply
21 somehow they're lying.

22 Well, let's think about it. The officers have told
23 you that the defendant led them on a chase where the defendant
24 throws a gun, and then he's later arrested. There is no one
25 else in that alley. If the officers are going to lie or

1 embellish their story, why would they stop there? Why would
2 they say, Oh, the defendant pitched the gun while we were
3 chasing him? Why didn't Officer Huter say, Hey, when I arrested
4 him, I pulled the gun right out of his waistband? It makes no
5 sense. If they're going to go a little bit, why not go all the
6 way? Because they're telling you the truth.

7 The defense also told you the Government is basing its
8 case on circumstantial evidence. Well, ladies and gentlemen of
9 the jury, that could not be further from the truth.

10 When we all finish with our closings, you'll hear from
11 the defense and you'll hear from Mr. Fuchs, and then Judge
12 Bennett will give you the jury instructions. You'll hear that
13 direct evidence is when someone eyewitnesses something. Judge
14 Bennett told you at the beginning of the trial that's the case
15 where, if you look out the window, and it's raining, that's
16 direct evidence that it's rain. Now, if you're inside this
17 courtroom, and you're sitting in the jury box, and someone comes
18 into this courtroom with a raincoat and an umbrella, and they're
19 sopping wet, that's circumstantial evidence that it's raining.

20 That's not what we have in this case. We have the
21 testimony of two experienced veteran Baltimore City Police
22 Officers, who were eyewitnesses to what was happening.
23 Eyewitnesses. Officer Huter approached the defendant. The
24 defendant ran. He chased the defendant.

25 Important things to know about Officer Huter's

1 testimony: He never lost sight of the defendant. Never lost
2 sight of him. His testimony yesterday was that at all times he
3 was approximately 10 feet away from the defendant, at all times.
4 Never lost sight of him.

5 As he rounded the corner, he saw him pull something
6 out, throw it across his body, heard a thud, then he wrestles
7 him. That's not circumstantial evidence. That's direct
8 evidence. That is based on his own observations, his own
9 senses, his own perceptions. Not circumstantial.

10 Same with Officer Laronde. Officer Laronde, same
11 thing: Defendant is approached. Checks his waistband. Says,
12 Who? Me? Turns around, runs. He puts on his lights, sirens.
13 Defendant doesn't stop. He goes to the lot, thinking that
14 there's a way to intercept. Can't intercept, so he comes back
15 around, parks his car, and goes back in the alley.

16 What does Officer Huter tell him? Gun over there.
17 Not, hey, gun over there, but see if you can find it, and let's
18 see -- we'll just say we found it on the defendant. No. He
19 goes and searches. Boom. What does he see? What does he see
20 with his own eyes? The gun. This gun. This gun sitting on top
21 of brush in good form.

22 So there's no circumstantial evidence in this case,
23 ladies and gentlemen. No circumstantial evidence.

24 Now, the defense is going to make a big deal about
25 fingerprints. They already have made a big deal about

1 fingerprints. But really the only thing you have to remember in
2 this case is this: Officer Laronde told you he was careful in
3 the way that he picked up his firearm. He said he picked it up,
4 said he tried not to handle it too much. And Mr. Dorr told you
5 that he did find what he thought would be a print; but, because
6 it was smeared or he couldn't tell whether it was a fingerprint
7 or a palm print or a fingerprint, meaning not the actual tip by
8 the side, he couldn't process it, he couldn't make a match. It
9 wasn't something he could look at and compare it to something
10 else. Just couldn't do it.

11 Now, the defense is going to want you to believe, Oh,
12 this is not police policy. They should've called the evidence
13 unit. You heard Officers Huter and Laronde tell you. In a gun
14 possession case, where the gun has not been fired, someone
15 hasn't been shot, and it's a non-homicide situation, they're not
16 calling the evidence unit, the evidence lab. Why? Because
17 they're not coming out. That's just the way it is. May not
18 like it. That's just the way it is. Told you that.

19 They collect evidence, in this case, a gun. They
20 collect it. They submit it. You heard the gun -- Mr. Dorr told
21 you, the gun was put into a gun envelope. He processed it. It
22 is what it is.

23 They're going to -- the defense is going to want you
24 to believe that somehow fingerprints should have been found, had
25 the gun been handled differently, should have been found. But

1 let me ask you one simple question: Fingerprints, or any of the
2 issues that the Government anticipates that the defense is going
3 to raise, do any of those issues negate the fact that Officer
4 Huter chased the defendant, saw him pitch what he thought was a
5 gun, and within a few moments Officer Laronde comes around and
6 recovers a gun?

7 After the defense has had a chance to make their
8 closing, Mr. Fuchs will stand up and address the issues, and I
9 anticipate that it's going to be a lot of issues that I've
10 touched on this moment.

11 Ladies and gentlemen, based on the testimony that was
12 presented to you at trial through Officer Huter, Officer
13 Laronde, Special Agent Kerwin, and Mr. Dorr, there is no doubt,
14 no doubt, that the Government has met its burden and can satisfy
15 all three elements and prove to you beyond a reasonable doubt
16 that the defendant is guilty as charged.

17 So a lot of you may ask, Why are we here? Why are we
18 here?

19 We have the best legal system in the world. It's not
20 perfect, and sometimes we hear things on the news or in the
21 newspaper or just through word of mouth that maybe discourages
22 us or encourages us about our legal system. But why our system
23 is the best is that our system provides that every defendant
24 charged with a crime has the right to have the Government prove
25 its case beyond a reasonable doubt.

1 Ladies and gentlemen, there are no tricks, no
2 surprises, no stories, no cases presented on all circumstantial
3 evidence in this matter. Not in this courtroom for the past two
4 days. All that you've been presented is strong, almost
5 overwhelming evidence that proves the defendant's guilt beyond a
6 reasonable doubt.

7 And, ladies and gentlemen, based on all the evidence
8 that's presented, the Government asks that you return the only
9 verdict that is consistent with the evidence presented and the
10 law that Judge Bennett will provide to you after we finish our
11 closings, and that the defendant is guilty as charged.

12 Thank you.

13 THE COURT: Thank you very much, Mr. Sippel.

14 Ms. Newberger?

15 MS. NEWBERGER: Thank you, Your Honor.

16 Good afternoon. I'm going to take my watch off to try
17 to keep track of how much of your time that I'm taking.

18 The bottom line in this case is Officer Huter told you
19 he can't be certain. If he can't be certain, how can you be?

20 There isn't forensic evidence in this case that ties
21 Mr. Lucas to the firearm that Mr. Sippel was waving around. And
22 there is no witness who can say with certainty that he saw
23 Mr. Lucas with that firearm. That's the bottom line, and that's
24 what this case is about.

25 Now, what the Government has offered you is

1 circumstantial evidence. Certainly, there is direct testimony
2 as to what Officer Huter and Officer Laronde's observations
3 were. But what they did is they drew inferences from what they
4 saw to conclude that Mr. Lucas had a gun, because Officer
5 Laronde absolutely never saw Mr. Lucas with a gun. And all
6 Officer Huter can say is, I think I saw Mr. Lucas throw a black
7 object, which I think was a gun. But he can't be certain. And
8 he quite creditably admitted that, he can't be certain.

9 And so what that is, let's take the observations that
10 the police officers made and the inferences that they drew, and
11 apply your common sense and think about all the circumstances
12 that surrounded the incident on July 6, and determine, were
13 those inferences the correct ones?

14 Now, I just listened to Mr. Sippel's closing. I
15 listened to Mr. Fuchs' opening at the beginning of this case.
16 And there is a seductive simplicity to the way that the
17 Government theorizes this all happened. It's very simple. It's
18 very clean. I understand the appeal of that.

19 But, ladies and gentlemen, that is not the
20 Government's burden. It's not enough to tell you, give you a
21 theory of the facts that is simple and clean. It's not the
22 standard for the prosecution to present evidence that gives
23 you -- or a theory of that evidence that is a plausible
24 explanation. It's not even enough for them to give you a theory
25 that is the most probable explanation.

1 The standard is proof beyond a reasonable doubt. And
2 it's when juries don't hold the Government to that very high
3 standard, that innocent men, like Lewis Lucas, get convicted of
4 crimes that they didn't commit. And so that burden isn't an
5 abstraction. It's not something that is just a pillar of
6 democracy, but it is too lofty to apply. It is something that
7 lives and breathes in this courthouse, in these courtrooms. And
8 it's why the 12 -- or the 13 of you are here right now. Because
9 that is the burden.

10 And juries play a profoundly important role in cases
11 like these in which you don't have a witness who can come and
12 take the stand and tell you with absolute certainty, I saw
13 Mr. Lucas with a gun. That would be a different case. But
14 that's not the case that we have here.

15 The police officers couched what they said, because
16 they don't know exactly what that black object is. They drew
17 inferences that it was a gun; but, whereas, in the first
18 situation, where the witness just comes in and says, I saw Lewis
19 Lucas with a gun, your role as jurors is just to ask, do I
20 believe him. But in a case like this, where what the officer
21 says is, I saw him throw a black object, and from all the
22 circumstances, I think it was a gun, your job is twofold.

23 First, the question is: Do I believe that he saw what
24 he says he saw? And the second step of your inquiry is: Do I
25 agree that, under the circumstances, he drew the correct

1 inference?

2 Judge Bennett is going to instruct you at the end of
3 this case, and he is going to give you an instruction about what
4 an inference is. And you can draw inferences. The Government's
5 case can be based on inferences.

6 But, as a jury, you have to look very, very critically
7 at the logic behind those inferential steps. You have to make
8 sure that, under all the circumstances that were in existence on
9 July 6, those inferences were, not just most likely correct, but
10 that you're convinced beyond a reasonable doubt that those
11 inferences were the correct ones.

12 And so this is not as simple as a case for you as the
13 Government would suggest.

14 This courthouse is built on the proposition that
15 individuals can make mistakes. The reason why we have juries is
16 a recognition that all of us are human. We can all make
17 mistakes. That's why we don't let police officers, when they
18 arrest someone, also pass judgment on whether they're innocent
19 or guilty. We recognize that sometimes the police can get it
20 wrong. We don't even entrust someone with as much experience as
21 Judge Bennett, who's been appointed by the President of the
22 United States and confirmed by the Senate, to determine whether
23 or not Mr. Lucas is innocent or guilty. And that is because our
24 system recognizes we're human. We can make mistakes.

25 And so the protection that our criminal justice system

1 has come up with to ward against the fallibility of all people
2 is to bring together 12 members of the community, and ask those
3 12 people to hear the evidence, deliberate together. And our
4 hope is that, because the 12 of you -- and Judge Bennett will
5 instruct you of this as well -- have to be unanimous, one way or
6 the other. All 12 of you have to agree. That the process by
7 which all 12 of you will reach an agreement is the best
8 protection we have against mistake.

9 And so recognizing that, recognizing that the reason
10 you're here is because we recognize that we're all fallible,
11 that we can all make mistakes, we have to leave open the
12 possibility that the police can make mistakes as well.

13 Now, there was questioning of Officer Laronde that
14 might have been uncomfortable, asking him about past conduct for
15 which he was sanctioned, about reports that he had not filed,
16 about reports whose accuracy had been questioned and found to be
17 not sufficiently accurate.

18 And the reason for that, ladies and gentlemen, is to
19 point out that Officer Laronde, like the rest of us, can make
20 mistakes. And he admitted, he's made them in the past. And
21 while it might not seem like a big deal as we sit here today
22 that a police report that he approved that said that one officer
23 retrieved a firearm, when it was actually another officer that
24 did that, for that case, that was probably pretty significant.
25 As he had to concede, lawyers rely on those reports; police

1 officers rely on those reports to recall what happened.

2 You've heard a lot about July 6 of 2009. That's more
3 than a year ago. It's a lot to expect anyone, including police
4 officers, to remember what happened a year ago, when they're
5 working every day arresting a lot of people. How are they going
6 to remember Lewis Lucas? How are they going to remember the
7 events of that night? It's from these reports, to assist them.

8 So, when there is an inaccuracy, that's not
9 insignificant. And I'm willing to believe that there is an
10 innocent explanation as a mistake, but that just furthers my
11 point.

12 Police officers are not superhuman. They can make
13 mistakes. And we have to leave open the possibility that
14 mistakes were made here.

15 Now, there were a lot of circumstances that were in
16 place on July 6 of 2009, that would be a breeding ground for
17 mistake of perception, of observation, of inference.

18 First of all, Officer Huter and Officer Laronde, both,
19 testified that this was at the very end of their shift. In
20 fact, they were actually on their way back to their Southwestern
21 District to call it the end of their day when they saw
22 Mr. Lucas.

23 After the end of a workday, anybody is tired. All of
24 us are tired. We're not necessarily at our best. I went home
25 one day after work, and it wasn't a particularly bad day, and

1 decided to wash my tablecloth, picked it up, put it in the
2 washing machine, and it wasn't until I took it out to put it in
3 the dryer that my cell phone fell out that I realized, my big,
4 black cell phone that has weight, that's black on a white
5 tablecloth, was sitting there the whole time, and I didn't even
6 notice. When we're tired, our powers of observation, our
7 analytical abilities, usually aren't as good.

8 And this was the end of their shift. And I also
9 think, an eight-hour shift for a police officer in a lot of ways
10 can be much more strenuous than eight hours of my day. They
11 have to be always on the alert. They have to be ready to
12 respond to something at a moment's notice. Who knows what other
13 things that had happened that day that they had responded to?
14 They could have had a very, very busy night.

15 So they may have been tired. And in fact, when we
16 talked about some of the mistakes that have been made, one of
17 the things they implied was, we were tired. And so that is a
18 circumstance that needs to be taken into consideration.

19 Another factor is that at 2:00 a.m. it's dark. Police
20 officers don't have superhuman eyesight. I don't care how many
21 streetlights there are in an area. Anyone can see better at
22 2:00 p.m. than they can at 2:00 a.m. And they testified that
23 that alleyway did not have street lamps. The street lamps that
24 are referred to are in the Ryder lot. And don't -- this idea
25 that those street lamps could give off a significant amount of

1 light into the alleyway isn't really plausible, if you look at
2 the exhibit there, Defendant's Exhibit 8.

3 The Ryder lot is at a lower elevation than the
4 alleyway. The streetlight is at the bottom of that hill, and it
5 has an arm that clearly faces towards the parking lot and away
6 from the alley. Common sense tells us that the darkest place
7 near a street lamp is usually right behind it, and that's where
8 the alleyway is. So there just isn't a significant amount of
9 light back there. It's hard to see.

10 And one other circumstance that these police officers
11 were dealing with at that time was fear. Officer Laronde told
12 you, there was adrenaline going. He had lost track of his
13 partner. They, throughout the whole time of this chase, thought
14 that they were chasing someone who might be a suspect in a
15 shooting.

16 When we are afraid, we interpret information
17 differently than we otherwise would. And so that is a
18 circumstance that could have affected them on that night.

19 And so recognizing that they're only human, and that
20 they were operating under difficult circumstances, we have to
21 look at what the Government's case is. Okay?

22 There are four real points of evidence in this case.
23 The first is that Mr. Lucas ran. The second is that the
24 officers believed that they saw him grabbing at his waistband.
25 The third is Officer Huter saying that he thought he saw the

1 defendant throw a black object. And the fourth is that a
2 firearm was found in the alleyway where Mr. Lucas was arrested.

3 Let's start with Mr. Lucas ran from Officer Huter.

4 Officer Huter testified that, when he got out of the
5 car, he said something along the lines of, Can I talk to you for
6 a second? Officer Laronde also testified that what he could
7 hear Officer Huter say was something along the lines of, Can I
8 talk to you for a second?

9 There is no clear verbal indication that these are
10 police officers. The car is unmarked. And Officer Laronde
11 testified that at the time that this encounter begins, the
12 light -- there are no blue and red lights out. There's no
13 sirens. Nothing like that. They're plain-clothed.

14 Now, they're not in uniform. Officer Huter is wearing
15 a pretty loud T-shirt and some shorts.

16 Now, I recognize that, when he testified yesterday, he
17 said, I had my vest on top of my T-shirt. But you also heard
18 that, when he testified back on April 23rd, he said, I can't
19 recall. If he couldn't recall on April 23rd, how could he be so
20 sure yesterday? He can't be a hundred percent certain. He was
21 under oath on April 23rd. This is the type of detail that he
22 probably just can't remember. He can't be sure. And so there
23 is a real possibility that Officer Huter's vest was underneath
24 his clothing that night, and it couldn't be seen.

25 He had a badge and a gun, but they were at his waist.

1 I don't know of many men who greet each other by the first thing
2 they do, looking at each other's waist. It's not the most
3 noticeable place to see a badge. It's not like it was on his
4 chest. It was at his waist, and the T-shirt may have been
5 obscuring it.

6 Now, Officer Laronde probably pretty clearly wasn't
7 identifiable as a police officer. And we know that because
8 Officer Laronde testified that, when he pulled into the Ryder
9 lot, trying to find his partner, a security guard came up to
10 him. That security guard couldn't recognize Officer Laronde as
11 a police officer. So that gives us a pretty good suggestion
12 that it was not clear to someone that these men were
13 unquestionably police.

14 And on that same point, Officer Laronde testified
15 that, once the chase began, he put his lights on. I think
16 Mr. Sippel also mentioned sirens. I don't think Officer Laronde
17 talked at all about sirens or something that would make noise,
18 but he talked about the blue-and-red lights.

19 Well, again, if he had had those blue-and-red lights
20 on when he had pulled into the Ryder lot, then he clearly would
21 have been identifiable as a police officer, and there wouldn't
22 have been someone, some Ryder security, yelling at him.

23 So probably again hard to remember, quickly evolving
24 situation, happened a year ago. Probably not right that those
25 lights were on. They probably weren't. They weren't clearly

1 identifiable.

2 And here's the other factor: Whether the officer was
3 wearing a vest or not. Officer Huter testified very clearly
4 that he had a flashlight on at the time he got out of the car.
5 Now -- and he was pointing it at Mr. Lucas. If he was pointing
6 it towards Mr. Lucas's face, Mr. Lucas might not have been able
7 to see very well. He might not have been able to see Officer
8 Huter, see whether he was wearing a vest, see whether he had a
9 badge, see whether he had a gun. But even if Officer Huter was
10 not pointing the ray of light directly into Mr. Lucas's eyes, if
11 you had a really bright object and it's nighttime, that's what
12 the eye is going to see. It's going to make it difficult to see
13 anything else close to that light.

14 So there is a very, very real possibility, under the
15 evidence presented, that it wasn't clear that Officer Huter and
16 Officer Laronde were police officers.

17 And sort of another touchy subject that I feel I need
18 to address.

19 There are some neighborhoods in Baltimore which are
20 pretty segregated. There are neighborhoods in Baltimore City
21 where the majority of the people who live in the neighborhood
22 are African-American, and the majority -- or at least a fairly
23 significant portion of the police force in that area is white.

24 In those neighborhoods, it might be fair to assume
25 that, when a white man at 2:00 a.m. gets out of a car and says,

1 hey, can I talk to you for a second, that it's a police officer.
2 But Officer Huter told you, this is a racially-diverse
3 neighborhood. There was nothing about Officer Huter's race that
4 would give any indication to anyone who he was. And this is
5 2:00 a.m. Running, when you're minding your own business, and
6 someone is asking to talk to you, could be understandable under
7 many circumstances.

8 If a police officer came up to me at 2:00 a.m., even
9 if I knew they were a police officer, I'd probably feel pretty
10 uncomfortable. There are a lot of explanations for running.
11 And Judge Bennett is going to instruct you that, while it is --
12 the Government can ask you to take Mr. Lucas's flight into
13 consideration, it does not necessarily mean that he's guilty of
14 anything.

15 People sometimes run. And in this case, I think
16 there's a lot of reason to believe he didn't know that he was
17 running from police.

18 Officer Huter told you that at some point in that
19 alley, after he tackled Mr. Lucas, he was able to get Mr. Lucas
20 under control and cuffed. At some point Mr. Lucas acquiesced to
21 Officer Huter's control. Officer Huter was also insistent. He
22 never pulled out his gun, and he never used that flashlight as a
23 bludgeon or a weapon.

24 One reasonable inference that can be drawn from that
25 is, Mr. Lucas acquiesced when he realized that he was dealing

1 with a police officer.

2 So there is a lot of reason to question whether or not
3 the fact that Mr. Lucas ran is indicative of anything at all.

4 Now, this issue of his grabbing at his waist. Pulling
5 up one's pants could, first of all, be a reflective response
6 when the first encounter happens. But, furthermore, it would be
7 hard to see what Mr. Lucas was doing when Officer Huter was
8 10 feet behind. And Officer Laronde may have been driving
9 parallel, but he said that he was having to try to get as close
10 as he could, and then veer back out again to avoid hitting
11 parked cars. And, as he also told you, in a vehicle, that
12 distance between Wilkens and the alleyway isn't very long. He
13 just didn't have a very good opportunity to observe what
14 Mr. Lucas was doing.

15 And the other bottom line is that someone pulls up
16 their pants doesn't necessarily mean that they're armed. There
17 is a style of wearing baggy pants that come below your waist.
18 If you're about to run, the first thing you're going to do is
19 pull up your pants so they don't get in the way while you're
20 running; and, similarly, as you're running, you're going to hold
21 on to them so that they don't trip you up.

22 So the fact that they saw him grabbing at his pants in
23 and of itself isn't enough. And they told you, they saw him
24 grabbing at his waist, but they didn't see him grabbing at
25 anything in particular. At this point no one has seen anything

1 that they identify as being a firearm.

2 Officer Huter testified that he believed he saw
3 Mr. Lucas throw a black object which he believed to be a gun.
4 First of all --

5 If you could put up Government's Exhibit 7.

6 This is an obstacle course. This is an urban,
7 obstacle course. The testimony from Officer Huter and Officer
8 Laronde is absolutely clear. These photographs are not a fair
9 and accurate depiction of the way it looked on July 6, because
10 it looked a whole lot worse. It looked a whole lot worse that
11 night. There was a lot more shrubbery. There was a lot more
12 debris. There was a lot more glass. There was a lot more
13 trash. This was a difficult course to run on.

14 As you are running this course, trying to go fast and
15 also trying not to fall, you're going to be paying pretty
16 significant attention to the ground. So, you know, he might not
17 have at all times had his eyes on Mr. Lucas.

18 Also, as we've discussed before, it was very dark back
19 there. He is not superhuman. And as he's running, the
20 flashlight is moving with him; and, even to the extent that he's
21 trying to hold it up, that would be pretty difficult to do. My
22 bet is, for certain portions of this, he's got it pointed toward
23 the ground so he doesn't fall.

24 Now, it also -- the motion that he described is that
25 the object is in his right hand, and that he throws it to the

1 left. It would be very difficult, when Officer Huter is 10 feet
2 behind, to see what is in Mr. Lucas's hand, if anything at all.
3 Under that motion, Mr. Lucas's body blocks sight of what he's
4 doing. But the other thing is, that motion is incredibly
5 unnatural. If you were going to try to toss something, this
6 would be the motion that you would make with your right hand.
7 And if you look at the photographs, if you look at Defendant's
8 Exhibit 5, strategically speaking, if you think you've got a
9 police officer on your back and you're trying to get rid of a
10 gun, the best place to throw it would be on top of the shed.
11 Hard for them to get it there. Or into one of these backyards
12 that you've heard about the alleyway. They are fenced in;
13 they're overgrown. It would be a great place to throw the gun.
14 It would be difficult for the police to find, and also you could
15 make the argument that maybe it belonged to one of the people in
16 the house.

17 So it doesn't really make sense that Mr. Lucas would
18 have done what Officer Huter thinks he saw. And Officer Huter
19 was very candid. He said he can't be absolutely sure, under the
20 circumstances, what he saw. He isn't sure what it was. He's
21 running -- he told you, he is running as fast as he can; and in
22 fact, in a couple seconds, he catches Mr. Lucas and tackles him.
23 So he is hard at work at this moment and in motion.

24 He says that he thinks he heard the object hit the
25 ground. And on questioning, he again admitted he can't be

1 certain what he heard. He doesn't know if what he heard was
2 something cracking under his foot, under Mr. Lucas's foot,
3 whether they were kicking up debris as they're running through
4 this trash-filled alley, as Officer Laronde and Officer Huter had
5 described it. There could have been a squirrel or a cat back
6 there that's running out of the way of all of this commotion.

7 And, if he's running as hard as he is, I believe that
8 he was, his heart is pounding. He's got the blood rushing in
9 his ears. He can't hear very well. He can't hear something hit
10 the ground, and certainly not with any type of certainty.

11 So, when we look at all of the circumstances, he can't
12 really be sure, and he told you he's not really sure, about what
13 he saw or what he heard.

14 Now, there was a firearm found in that alley. Officer
15 Huter told you that this is the kind of neighborhood where a gun
16 might be stashed. And it's a high-crime neighborhood. There
17 had been a shooting a couple of days before. They describe it
18 as an open-air drug market, where there are stash houses.
19 Officer Huter offered that alleys can also be used as stash
20 locations. This is an alleyway that is both obscured, so people
21 can't see well, but you can get to it pretty quickly. So it
22 would be a good place to stash a weapon.

23 And Mr. Fuchs asked on cross-examination questions
24 along the lines of, well, was it dirty; was it -- did it have
25 cobwebs on it; was it rusty; did it look like it had been out

1 there in the rain, under the elements?

2 Well, ladies and gentlemen, that gun doesn't have to
3 have been abandoned to have been located there. Someone could
4 have put it there, expecting to come back and retrieve it.
5 That's the type of neighborhood that this is.

6 And one other thing that's worth noting: Officer
7 Laronde says in less than a minute he found the gun. And the
8 Government makes it sounds like that's really fast.

9 I've taken a long time so I am not going to do it, but
10 what I would ask you to do is, when you go back into that room,
11 count to 60, count out a minute. A minute actually is a pretty
12 significant period of time.

13 If I just walk over here, oh, here is what I was
14 looking for, that's far less than a minute. So this wasn't
15 quite as easy to find as they're suggesting it was. One minute
16 is a pretty significant period of time.

17 Now, we made issue about the fact of how Officer
18 Laronde handled the weapon because it does matter. There isn't
19 prints in this case; there isn't forensic evidence; and it is in
20 part due to the handling.

21 And one of the things that Mr. Fuchs tried to suggest
22 is this was an emergent situation. You have the defendant
23 there. You're not going to just leave the gun sitting there.

24 Well, Officer Laronde told you, at the point he
25 retrieved the gun, a lot of uniformed officers had come to the

1 scene. There were officers there that could have escorted
2 Mr. Lucas out. There were officers who could have stood by and
3 guarded the gun while, at the very least, they got a camera to
4 take a photograph so they could come in and show us exactly,
5 here's where we found the gun, and this is what it looked like
6 that night. But they chose not to do that.

7 And what they do instead is they call a witness, Sean
8 Dorr, to come in and, basically, say for the Government, the dog
9 ate my homework. We don't have prints. And I am going to tell
10 you, give you some excuses why. But the interesting thing is he
11 told you, there was a little bit of a print there. And he said,
12 while you need a full print to be able to make a positive
13 identification, you don't need as much information for the
14 possibility of excluding.

15 But Mr. Dorr told you, he got the lift, it wasn't
16 enough to make a -- to make an identification, so destroyed it.
17 He didn't even attempt to compare it to Mr. Lucas to determine,
18 hey, maybe we can exclude Lewis Lucas. He didn't do that. And
19 he didn't preserve the lift card so we couldn't do that. So
20 it's just a sort of dog-ate-my-homework testimony.

21 So, ladies and gentlemen, that is the Government's
22 case. It's highly prone -- it's subjective. It asks you to
23 draw inferences. It rests on the inferences drawn on police
24 officers that they're making under very, very difficult
25 circumstances.

1 And, again, we know that they made some mistakes that
2 night. They mistook Mr. Lucas for the shooting suspect. Yes,
3 both are black men, both have mustaches, both wear their hair in
4 dreadlocks. But the shooting suspect was 17 years old on
5 July 6, 2009. No offense to Mr. Lucas, but he doesn't look 17.
6 He also is taller than 5-6 and weighs more than 140 pounds.

7 So they had to admit, they made a mistake. So that's
8 one mistake of perception. It was dark out. They were
9 operating quickly. It was at the end of their shift. There are
10 good reasons. I don't think it was bad intent on their part,
11 but it's a mistake.

12 The other thing that we spent a lot of time on, and
13 maybe it seemed like too much time, was this issue about how the
14 police report was written. It said July 7 instead of July 6.
15 I'm not trying to suggest that there is any ambiguity as to
16 which date that this happened. The testimony has been clear.
17 This all happened on July 6 of 2009.

18 But the point is, when they wrote the report that
19 night, they made the mistake. Probably because they were tired,
20 but they made a mistake. So, if they made those mistakes that
21 aren't insignificant, how can we be sure that they didn't make
22 other ones?

23 Mr. Fuchs gets to stand up and talk to you again, and
24 I am not going to be able to speak with you after he does.
25 Please, don't let him misconstrue what I'm saying. Please do

1 not think that finding Mr. Lucas not guilty is a rebuke to the
2 Baltimore City Police Department. Please don't let them try to
3 suggest that, either you find Mr. Lucas guilty, or you're saying
4 that the Baltimore City Police are lying. I haven't said that.
5 And don't let them try to misconstrue my words as being that --
6 indicating that that's what I've said.

7 What I have said is that you can believe every
8 observation that Officer Huter made, even Officer Laronde, and
9 still conclude that, under all the circumstances, you are not
10 convinced beyond a reasonable doubt that the inferences that
11 they drew were the correct ones. So don't think for a second
12 that a not guilty verdict is rebuke to the police.

13 And also, as I told you, this whole court is built
14 under the premise that people can make mistakes. That applies
15 to the police as well. But if we want our police to act
16 quickly, if we want our police to respond -- Officer Huter told
17 you, this was maybe three, four minutes, this whole thing was
18 done. If we want them to be able to respond quickly under these
19 circumstances, not stop and think, not weigh, am I correct about
20 this, we have to promise them that we'll make sure that innocent
21 people don't get convicted, if they make mistakes; that we will
22 be the check to make sure that they can act spontaneously, they
23 can go quickly with the moment, but that that's not the final
24 word.

25 The 12 people will deliberate hard, will really

1 scrutinize all of the circumstances, have the benefit of time,
2 calm, air conditioning, daylight -- all the things that Officer
3 Huter and Officer Laronde didn't have that night -- to make sure
4 that they didn't make a mistake. What you're doing here helps
5 the process. It doesn't hinder it. And like I said, this isn't
6 an abstraction.

7 The bottom line, ladies and gentlemen, as I told you
8 at the beginning, is that Officer Huter cannot be certain as to
9 what he saw, what he heard. How can you be, under all the
10 circumstances that were in existence? They were tired. They
11 were scared. They were acting incredibly quickly when -- under
12 a very short time frame, when it was extremely dark, and in an
13 alleyway that was full of debris, trash. It was a minefield.

14 That's doubt, ladies and gentlemen. Those
15 circumstances, those difficulties, those things that would
16 hinder the police officers from making the best inferences
17 possible that night, that is reasonable doubt. And so I ask you
18 to return the only verdict that I think all of the evidence in
19 this case, all of the circumstances supports, and that is a
20 verdict of not guilty.

21 Thank you.

22 THE COURT: Thank you, Ms. Newberger.

23 Mr. Fuchs?

24 MR. FUCHS: Thank you, Your Honor.

25 Good afternoon, ladies and gentlemen.

1 For all of Ms. Newberger's very capable arguments, I
2 think it's important to remember what is not in dispute here.

3 There is no dispute that on July 6 of last year, Lewis
4 Lucas was in that alleyway. There is no dispute that on July 6
5 of last year, this pistol was found in that alleyway, just a few
6 feet from Mr. Lucas. The question that you have to decide is,
7 if the Government has proven beyond a reasonable doubt that
8 Lewis Lucas put that gun there.

9 And Ms. Newberger argues, not really that any of the
10 facts are different, not that what the police officers say they
11 saw wasn't what they thought they saw. She's just arguing that
12 this is all a mistake. It's all an unfortunate set of
13 circumstances.

14 If that's true, if this is just a mistake, and
15 Mr. Lucas was just in the wrong place at the wrong time,
16 Mr. Lucas has got to be the unluckiest man alive.

17 I ask you to remember the testimony you've heard.
18 Both Officer Huter and Officer Laronde corroborated each other.
19 They said that night they were patrolling in the 2700 block of
20 Wilkens Avenue. They thought they saw someone who was wanted
21 for questioning. He saw the picture of the shooting suspect.
22 Clearly, there is a resemblance between Mr. Lucas and that
23 suspect. They pulled over to talk to him, to see if it was in
24 fact that person. When they got to the curb, Officer Huter got
25 out. He asked Mr. Lucas, Can I talk to you?

1 Mr. Lucas at that point walked down the steps, and he
2 started saying, Who? Me?

3 Now, there's clearly great dispute about whether or
4 not Officer Huter was clearly identifiable as a police officer.
5 I put it to you. He was wearing a badge. He is wearing a
6 bulletproof vest. He's got a flashlight in his hands. He says
7 to Mr. Lucas, Can I talk to you? Mr. Lucas doesn't say, Who are
8 you? Mr. Lucas doesn't say, Get out of here. He doesn't say,
9 Why should I talk to you? He says, Who? Me? Who? Me? And he
10 starts backing away.

11 Officers Huter and Laronde both testified they saw Mr.
12 Lucas reaching for something in his pants. They didn't testify
13 that he was pulling up his pants. There's no testimony he was
14 wearing big pants that were falling down. They testified that
15 he reached for something in his pants; and that, based on their
16 training, based on their experience, that is consistent with
17 people who are holding a gun.

18 Officer Huter and Officer Laronde both testified, when
19 Officer Huter took a step toward Mr. Lucas, Mr. Lucas turned and
20 he ran. And he ran, not with both arms pumping, he ran with one
21 arm against his side, one hand on his waist. Again, he
22 testified, it's not because he was pulling up his pants, it's
23 not because his pants were big. They testified that it looked
24 like he was holding something in his pants, based on their
25 training, that's the way someone who's trying to hold a gun as

1 they run.

2 Officer Laronde testified that as soon as Mr. Lucas
3 took off running, he put the lights on in his car. Now,
4 Ms. Newberger says he might have been mistaken. He was probably
5 mistaken. There is no evidence that he was mistaken. He said
6 very clearly, I put the lights on, and I followed him down the
7 street.

8 At that point, you'd think it would be pretty clear
9 that Mr. Lucas was dealing with police officers. He's got one
10 man chasing him; he's got another guy in a car with red and blue
11 flashing lights. He still doesn't stop. He keeps running. He
12 runs down Wilkens. He runs down Brunswick. He decides to run
13 up that alleyway.

14 Officer Huter testified he followed him up that
15 alleyway. He was 10 feet behind him.

16 Ms. Newberger showed you the pictures of the alleyway.
17 She says there is no way they could have seen what they saw. It
18 must have been dark. Officers Huter and Laronde said, yes, it
19 was darker than it was on the street, but there were lots
20 around, light came into the alleyway, had my flashlight. Yes,
21 it was dark, but I could see what was in front of me.

22 Officer Huter testified that, as he followed Mr. Lucas
23 up the alleyway, he saw him take something in his hand, Officer
24 Huter, looked like a pistol. It was a dark object that looked
25 like a gun, and he threw it across his body.

1 Officer Huter, no questions about that. He didn't
2 hesitate. That's what he saw. Based on his training and
3 experience, based on what he saw that night, he concluded that
4 was a gun. He saw where the gun landed. He heard something
5 heavy hit the ground. There is no dispute about any of that.

6 Ms. Newberger asked, well, why did he throw it to his
7 left? Why didn't he throw it up on the nearby shed? Who knows?
8 The alleyway opens to the left, and Mr. Lucas, when he made that
9 turn, that's where the space was, who knows why he threw it.

10 Officer Huter said, I saw him take something in his
11 hand that looked like a pistol; he threw it to the ground; I saw
12 where it landed; I heard what I thought was a heavy object hit
13 the ground; and then I tackled him. He tackled Mr. Lucas. And
14 even though at that point, the lights and sirens had been on, he
15 had seen Officer Huter get out of the car with a badge. He
16 keeps fighting. He kept trying to get away. He only submitted
17 once Officer Huter got him into cuffs.

18 Officer Laronde then comes into the alleyway. Officer
19 Huter says, there is a gun over there. Officer Laronde's
20 testimony was, I walked over there, shined my flashlight, and I
21 found it.

22 So Laronde didn't say, I searched for a minute and
23 found it. He said it took less than a minute. He said he found
24 it easily. He said it wasn't under anything; it wasn't hidden;
25 it wasn't behind anything. He said he found it very easily, was

1 out in the open. And I think that's an important point. It was
2 out in the open.

3 Ms. Newberger argues, well, it could have been stashed
4 there; it could have been left there. It's in the middle of an
5 alleyway out in the open. It's not under the trash. It's not
6 hidden in anything. It's not up on that shed nearby. It's not
7 behind a rock. It's out in the open.

8 Officer Laronde was very clear, he picked it up, there
9 was no rust on it; there was no dirt on it; there was no
10 cobwebs. It looked like it had just gotten there.

11 Officer Laronde secured the weapon. He said it was
12 evidence. Mr. Lucas was standing nearby. Put it in his trunk,
13 put it in an evidence bag, and he submitted it for fingerprints.
14 He did what he was supposed to do. He said, when he picked it
15 up, he was very careful, as well as he could. He tried not to
16 touch too much of the pistol. He tried not to destroy any
17 fingerprints that might have been there. He did what he was
18 supposed to do. He submitted it to BPD's print lab.

19 Ms. Newberger says BPD print lab, that's the dog ate
20 my homework. They did what they were supposed to do. They
21 tested it for prints. They just couldn't find any suitable
22 prints.

23 Mr. Dorr came in and testified why that would be.
24 It's the nature of these handguns. They've got rubber grips.
25 There's all sorts of contours on it. Every time you put it into

1 something, take it out, move it around, you destroy these
2 prints. He talked about how hard it was to find prints.

3 It wasn't a dog ate his homework. He did his best.
4 He recovered something. It wasn't suitable. He couldn't do it.
5 He told you why that likely was.

6 And that's the evidence in this case. Ms. Newberger
7 says it's all circumstantial. It's all a mistake. She doesn't
8 argue what the officers saw, just the conclusions they drew.
9 But, again, if it's all a mistake, how could this all happen to
10 one man?

11 Mr. Lucas, when confronted by the police, chose to
12 run. He chose to run grabbing something in his pants. Even
13 though there are lights and sirens going, he chooses to keep
14 running. He chose to run up that alleyway. He throws
15 something. Officer Huter says it looks like a gun.

16 Mr. Lucas happens to throw something in the area where
17 Huter saw that something land, there happens to be a pistol,
18 with no dirt, no rust, no cobwebs, it's not in anything. He's
19 tackled. He continues to fight. He continues to try to get
20 away.

21 Take all of that evidence together -- all the
22 testimony you've heard, stipulations, all the expert
23 testimony -- take it all together, you have to ask yourself, did
24 Mr. Lucas put this gun in that alley?

25 And when you decide that question, I ask you to use

1 your common sense. I ask you to remember the testimony you've
2 heard, all the exhibits that will go back with you. At that
3 point, I'll ask you to return the only verdict we believe is
4 consistent with the facts you've heard, the evidence you've
5 heard, and the law as Judge Bennett will explain to you, and
6 that's a verdict of guilty.

7 Thank you.

8 THE COURT: Thank you, Mr. Fuchs.

9 (Judge's Charge to the Jury not herein transcribed.)

10 * * * * *

11 I certify that the foregoing is a correct
12 transcript from the record of proceedings in the above-entitled
13 matter. Any redaction of personal data identifiers pursuant to
the Judicial Conference Policy on Privacy are noted within the
transcript.

14 _____
15 Julie A. Wycoff, RPR
16 Official U.S. Court Reporter
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21
22
23
24
25

I N D E X

FABIEN LARONDE

CONTINUED DIRECT EXAMINATION146
Questions by Mr. Clinton Jacob Fuchs

CROSS-EXAMINATION152
Questions by Ms. Katherine Tang Newberger

REDIRECT EXAMINATION192
Questions by Mr. Clinton Jacob Fuchs

SEAN DORR

DIRECT EXAMINATION198
Questions by Mr. John Walter Sippel, Jr.

CROSS-EXAMINATION213
Questions by Mr. Brendan A. Hurson

'	2007 [1] 178/9	A
'09 [1] 168/12	2009 [21] 145/13 152/9	a.m [15] 135/12 152/25
-	154/23 154/23 168/12 170/25	168/21 168/22 169/2 169/2
-- and [1] 220/14	190/11 234/6 235/3 259/15	169/5 270/20 272/17 272/18
-- are [1] 185/11	268/4 268/24 269/19 270/3	287/19 287/22 291/25 292/5
-- interstate [1] 245/6	270/16 270/19 275/5 286/2	292/8
-- of [1] 237/24	286/16 299/5 299/17	abandoned [1] 297/3
-- on [1] 138/10	2010 [2] 135/12 170/19	abilities [1] 287/7
-- that [1] 210/20	21 [1] 253/16	ability [2] 201/9 211/21
.	21201 [1] 135/14	able [16] 137/18 162/21
.22 [2] 234/6 259/19	21st [1] 136/18	163/1 180/5 201/15 212/9
.22 caliber [1] 234/6	23 [1] 253/15	213/5 252/3 273/19 273/20
0	23rd [3] 289/18 289/19	291/6 291/7 292/19 298/12
09 [1] 168/9	289/21	299/24 300/18
09-CR-560 [1] 135/6	25 [5] 136/21 172/25 173/16	about [104] 137/20 138/17
09AG00251N [1] 210/17	259/2 260/4	144/15 144/22 145/12 145/14
1	27 [1] 263/12	146/2 146/20 147/10 150/20
1,000 [1] 222/6	2700 [2] 271/10 302/19	151/23 154/7 154/8 159/7
10 [5] 167/23 240/24 241/2	28 [1] 262/18	160/23 164/23 165/15 167/9
246/9 248/15	29 [9] 236/10 236/15 237/15	170/11 170/21 171/8 171/14
10 feet [4] 278/3 293/8 295/1	237/18 238/14 239/10 239/17	174/6 174/19 174/22 178/22
304/15	245/4 245/11	178/23 181/9 181/21 181/23
101 [1] 135/14	2:00 [10] 168/22 169/5	181/23 181/25 182/2 182/3
1018 [1] 239/14	270/20 272/17 272/18 287/19	182/5 186/5 186/13 186/16
11 [16] 180/14 180/14 180/16	287/22 291/25 292/5 292/8	188/20 191/3 192/18 192/19
180/18 180/22 180/24 240/9	2:00 a.m [3] 152/25 168/21	194/22 198/4 198/21 206/13
240/23 241/3 241/11 241/12	169/2	206/17 207/17 213/11 214/2
241/14 247/6 250/12 250/22	2:00 p.m [1] 287/22	216/8 219/14 221/11 222/6
251/1	3	227/11 228/21 230/3 230/7
115 [1] 239/16	30 [1] 145/25	234/6 235/21 235/23 237/9
1185 [1] 239/16	4	237/10 240/22 242/5 243/5
12 [13] 234/19 234/23 240/25	4-19-92 [1] 155/1	246/12 246/14 246/16 253/20
241/3 250/5 251/13 283/8	40 [2] 246/7 246/8	254/16 254/22 259/15 262/8
285/2 285/3 285/4 285/6	5	266/21 270/23 274/3 275/18
285/7 300/25	5-3 [1] 252/15	275/25 276/22 277/25 278/24
13 [16] 214/23 215/9 216/14	5-6 [2] 155/6 299/6	278/25 280/22 281/24 282/11
217/16 217/21 221/5 235/1	50 [2] 245/22 245/24	284/3 285/14 285/15 285/16
235/11 235/13 236/4 240/1	560 [1] 135/6	286/2 287/16 290/17 290/18
240/14 240/23 241/4 247/6	6	292/3 293/18 296/12 297/17
283/8	60 [1] 297/11	299/13 300/19 303/3 305/1
130 [1] 198/21	608 [2] 183/22 184/13	305/5 307/2
14 [13] 215/12 215/15 216/23	609 [2] 181/17 183/22	above [6] 135/11 169/10
217/16 217/21 218/5 240/1	677 [1] 239/14	199/25 212/12 222/1 308/11
240/5 240/14 240/23 241/4	6:00 [5] 168/21 169/2 169/3	above-entitled [1] 308/11
247/6 252/13	169/4 270/20	abrupt [1] 203/6
140 [1] 299/6	6:00 a.m [1] 168/22	absolute [2] 241/25 283/12
15 [1] 245/19	6th [5] 168/13 168/14 168/23	absolutely [9] 203/25 220/8
16 [2] 209/15 209/18	171/6 269/19	221/23 228/7 235/13 258/2
17 [3] 155/2 299/4 299/5	7	282/5 294/8 295/19
18 [5] 169/6 234/8 235/5	7-6-09 [1] 168/9	abstraction [2] 283/5 301/6
252/9 259/20	70 percent [1] 199/15	abundance [1] 233/9
19 [1] 252/9	7th [2] 168/13 168/23	abuts [1] 295/12
1982 [1] 239/14	7th or [1] 171/5	accept [1] 269/2
1983 [1] 184/15	8	accepted [3] 200/15 234/2
1997 [1] 239/16	803 [1] 238/18	235/8
1:30 [9] 246/20 246/24	9	accidental [1] 201/1
247/20 247/20 247/21 248/2	90 percent [1] 230/13	accompanied [1] 218/7
266/4 267/7 267/9	92 [1] 155/1	According [1] 271/4
1:55 [2] 168/9 168/12	921 [2] 234/8 235/5	accordingly [2] 200/16 239/9
2	922 [1] 259/21	accuracy [4] 137/7 171/24
2,000 [1] 222/6	94 [2] 234/6 259/19	174/8 285/16
20 [4] 135/12 145/25 231/11	9:25 [1] 135/12	accurate [12] 141/18 161/4
253/6	9th [1] 154/23	161/5 167/20 169/16 171/14
2004 [2] 136/23 137/4		171/16 175/7 175/8 175/17
2006 [3] 137/1 137/6 178/8		285/17 294/9
		accurately [1] 174/23
		accused [2] 253/22 255/1
		acquiesced [2] 292/20 292/25
		acquittal [1] 245/12
		across [5] 150/14 272/8

A	afternoon [5] 267/11 267/22 268/2 281/16 301/25 again [42] 150/9 151/4 169/8 185/14 187/16 189/2 204/22 205/15 205/23 205/24 206/13 206/19 207/4 211/12 211/18 211/18 211/22 212/2 212/3 212/7 212/15 217/13 222/5 224/10 227/23 235/7 244/18 252/1 252/14 256/25 257/6 274/11 274/17 275/21 290/19 290/23 293/10 295/25 299/1 299/23 303/21 307/9 against [14] 136/22 173/1 173/17 173/20 178/5 184/20 185/1 185/23 235/23 242/20 242/22 285/1 285/8 303/21 agency [1] 199/25 agent [12] 139/12 139/19 144/10 144/19 196/22 196/22 237/20 238/23 269/6 269/8 269/16 280/13 aggressive [1] 150/19 ago [8] 146/13 148/21 150/7 174/21 222/6 286/3 286/4 290/24 agree [5] 140/6 171/9 265/6 283/25 285/6 agreed [7] 140/25 141/6 171/6 234/5 234/20 235/2 261/5 agreement [2] 255/15 285/7 agrees [1] 144/18 ahead [4] 139/8 142/11 234/24 250/15 air [4] 148/24 272/19 296/18 301/2 Alcohol [1] 269/7 alcoholic [1] 243/12 alert [1] 287/11 alive [1] 302/16 all [178] allegation [3] 144/22 172/16 183/6 allegations [3] 137/22 137/22 186/9 alleged [1] 261/9 alley [18] 160/22 160/23 161/12 162/16 162/18 193/2 193/12 193/15 193/21 193/25 272/25 276/25 278/15 288/6 292/19 296/4 296/14 307/24 alleys [1] 296/19 alleyway [32] 158/12 164/24 166/8 192/22 194/3 272/9 272/15 272/20 272/22 272/24 273/2 273/6 287/23 288/1 288/4 288/8 289/2 293/12 295/12 296/20 301/13 302/4 302/5 304/13 304/15 304/16 304/20 304/23 305/8 305/18 306/5 307/14 allow [1] 183/11 allowed [1] 159/2 almost [2] 272/10 281/4 along [15] 152/15 156/2 156/22 157/8 159/3 177/8 230/8 268/8 268/10 271/13 272/16 274/21 289/5 289/7 296/24 alongside [1] 272/11	already [6] 215/24 251/17 261/12 262/15 266/23 278/25 also [42] 148/19 149/19 149/19 152/2 156/5 162/19 186/25 188/14 217/1 218/4 225/21 227/22 231/9 236/21 239/15 240/10 241/8 244/8 257/22 261/8 262/9 269/16 269/22 271/9 271/20 271/21 276/3 277/7 284/18 287/8 289/6 289/17 290/16 292/21 293/11 294/15 294/18 294/24 295/14 296/19 299/6 300/13 alteration [2] 257/7 257/8 altercation [6] 137/3 149/15 150/12 188/15 188/17 189/17 always [8] 187/8 204/4 204/8 252/2 253/25 256/9 267/1 287/11 am [17] 141/16 142/10 179/17 203/3 210/12 215/17 218/4 221/10 227/2 246/4 250/15 262/25 263/21 297/9 298/9 299/24 300/19 ambiguity [1] 299/15 ambit [2] 136/15 238/20 AMERICA [1] 135/4 American [1] 291/22 ammunition [1] 259/25 amount [4] 204/18 243/8 287/25 288/8 analysis [10] 198/25 200/11 200/16 208/13 210/7 219/17 225/14 226/14 239/4 269/12 analytical [1] 287/7 analyze [5] 202/8 224/4 224/6 224/9 230/18 analyzed [2] 222/4 269/9 another [17] 146/15 176/1 185/23 200/6 203/9 204/2 205/23 206/15 212/3 213/22 220/19 220/20 228/19 285/23 287/19 291/17 304/10 answer [5] 170/8 181/18 183/12 209/18 224/12 answers [2] 252/24 253/1 anticipate [2] 139/25 280/9 anticipated [1] 142/18 anticipates [2] 275/7 280/2 any [136] 136/14 138/3 138/24 139/16 139/19 140/17 140/23 141/4 141/17 142/19 144/18 151/11 158/16 159/13 163/2 165/5 166/10 176/15 179/12 180/5 180/5 184/25 190/22 192/24 194/5 194/7 194/9 195/20 195/21 195/22 195/22 196/5 199/21 200/12 201/1 201/10 204/18 204/22 205/1 205/8 205/12 205/15 205/17 205/20 205/21 205/23 206/14 207/5 209/2 211/13 211/16 212/4 212/8 217/14 219/4 219/5 219/10 219/17 222/1 222/11 222/17 222/18 223/12 223/21 225/22 226/19 227/21 229/7 229/19 231/14 231/20 232/11 235/13 238/6 239/11 239/19 239/20 242/5 242/12 242/19 242/22 243/11 243/12 243/12 244/12 247/7
----------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

A	199/15 199/23 199/25 200/6 202/22 203/4 203/8 203/13 203/15 203/16 203/18 203/25 204/8 204/9 204/10 204/12 205/3 205/5 207/19 211/2 213/21 214/4 215/9 216/2 217/16 218/15 219/3 219/4 219/16 221/5 221/9 225/7 225/15 225/24 227/1 227/17 227/18 228/13 228/16 229/12 230/13 230/22 231/3 232/17 238/20 238/21 240/6 240/23 240/24 241/2 241/4 241/11 243/7 243/11 243/15 245/13 246/3 247/2 247/6 247/7 247/17 248/13 248/14 251/20 252/13 252/25 252/25 253/1 254/1 254/3 254/8 255/14 256/10 256/12 257/2 257/14 266/4 266/19 266/25 267/13 267/22 269/14 275/13 275/15 275/18 276/25 280/17 280/17 281/1 283/8 284/16 286/5 286/6 286/12 286/24 287/21 287/24 287/24 288/16 288/22 289/9 289/12 291/19 291/19 291/20 291/22 292/10 294/8 294/14 295/12 296/18 299/3 299/9 300/4 300/9 302/10 303/7 303/17 307/13 308/12	253/20 254/16 254/22 276/24 277/3 289/2 arresting [3] 177/21 180/11 286/5 arrests [7] 145/20 145/21 145/22 145/24 152/22 164/2 191/7 arrive [1] 163/11 arrived [3] 146/24 161/20 165/20 as [217] aside [1] 203/10 ask [30] 138/16 165/5 178/20 184/19 184/25 208/4 215/2 223/22 224/4 224/6 225/11 227/17 227/18 227/23 228/17 228/21 243/11 276/11 280/1 280/17 283/19 285/2 292/12 297/10 301/17 302/17 307/23 307/25 308/1 308/3 asked [16] 139/15 164/23 167/9 170/21 178/23 182/2 182/3 191/3 210/23 226/24 230/7 243/18 243/25 296/23 302/25 305/6 asking [7] 137/20 141/19 184/19 208/5 230/3 285/14 292/6 asks [3] 252/19 281/8 298/22 assault [5] 189/12 189/13 189/14 189/17 189/21 asserted [1] 252/25 assigned [7] 144/19 145/18 145/19 152/5 152/9 152/16 152/21 assignment [1] 144/21 assist [1] 286/7 Association [2] 198/10 198/12 assume [2] 220/22 291/24 assumed [1] 252/21 assumes [1] 252/18 ate [4] 298/9 298/20 306/19 307/3 ATF [2] 224/6 237/20 attach [1] 242/19 attached [1] 223/10 attack [1] 258/3 attacking [1] 220/19 attempt [1] 298/17 attempted [4] 253/20 254/16 254/24 256/2 attend [5] 136/3 143/12 224/17 237/11 247/19 attention [3] 270/25 274/2 294/16 attentiveness [1] 248/9 attorney [2] 182/10 184/6 attorneys [2] 169/25 244/23 August [1] 198/11 authored [5] 137/7 174/8 218/15 218/18 218/20 authored that [1] 218/18 auto [1] 199/8 Avenue [4] 271/10 271/11 272/8 302/20 avoid [2] 157/11 293/10 aware [7] 172/25 173/16 173/19 184/20 185/1 185/11 189/11 away [13] 194/16 204/25 206/1 272/4 275/10 275/11
----------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Case 1:09-cr-00560-RDB Document 60 Filed 08/03/10 Page 179 of 210	
A	because [69] 138/13 147/17 149/4 149/22 152/10 152/13 152/19 159/7 159/8 160/24 160/25 161/13 162/4 162/6 162/18 168/24 169/18 170/6 171/2 176/12 176/14 177/4 177/10 177/13 178/23 178/23 181/7 184/22 185/5 206/21 207/5 211/14 211/16 212/7 215/18 222/5 222/14 228/24 230/19 234/8 236/22 242/12 242/21 252/3 252/23 269/23 270/7 272/17 272/23 274/25 275/13 275/15 275/20 276/2 277/6 279/5 279/16 282/4 283/8 283/15 284/23 285/4 285/10 290/7 294/9 297/18 299/19 303/22 303/23
away... [7] 275/12 275/15 278/3 288/5 303/10 305/16 307/20	217/23 218/17 220/20 224/24 226/24 232/15 238/7 240/5 240/9 240/13 253/16 265/24 272/21 279/11 279/24 283/20 283/23 286/9 292/16 296/7 300/7 308/3
B	believed [14] 156/17 161/21 253/20 253/23 254/6 254/16 254/21 255/9 256/3 256/24 273/17 288/24 294/2 294/3
Bachelor's [1] 198/5	belonged [1] 295/15
back [54] 136/6 136/23 138/24 138/25 139/22 143/14 144/1 149/1 149/6 153/2 153/10 153/11 157/11 160/4 160/9 170/18 192/16 195/4 196/14 202/21 203/20 231/25 232/21 232/21 232/24 236/20 236/23 237/4 237/9 241/22 246/20 246/23 246/25 247/21 249/2 250/22 251/1 259/1 266/3 270/4 272/4 272/22 278/14 278/15 286/20 288/9 289/18 293/10 294/18 295/9 296/5 297/4 297/10 308/2	below [1] 293/17
background [6] 198/4 201/19 205/9 205/11 209/23 223/10	bench [28] 173/4 173/13 177/24 177/25 185/7 194/17 208/2 210/10 215/25 216/1 217/19 218/24 218/25 220/25 225/19 226/22 227/7 227/8 228/23 229/1 232/3 232/4 233/7 233/14 236/5 236/6 237/1 237/11
backing [1] 303/10	benefit [1] 301/1
backtracked [1] 158/22	Bennett [10] 135/13 266/5 277/12 277/14 281/10 284/2 284/21 285/4 292/11 308/5
backup [1] 165/23	best [19] 164/8 167/5 168/15 169/10 195/15 225/15 226/17 226/25 227/24 229/22 230/3 230/6 280/19 280/23 285/7 286/24 295/10 301/16 307/3
backyards [1] 295/11	bet [1] 294/22
bad [4] 275/13 275/16 286/25 299/10	better [3] 255/18 257/6 287/21
badge [13] 190/6 190/8 190/10 190/13 190/17 271/19 275/24 275/25 289/25 290/3 291/9 303/5 305/15	between [20] 145/25 180/23 202/12 203/18 203/22 203/25 204/19 206/19 207/8 214/3 214/7 214/9 233/25 233/25 234/5 235/2 271/1 276/3 293/12 302/22
badges [1] 258/1	beverage [1] 243/12
bag [5] 229/16 229/17 230/7 230/10 306/13	beyond [14] 137/21 238/7 239/12 242/13 260/11 261/3 275/3 280/15 280/25 281/5 283/1 284/10 300/10 302/7
baggy [1] 293/17	Bichromatic [2] 231/1 231/8
bailed [1] 185/16	bifurcations [1] 203/6
Baltimore [23] 135/14 178/16 178/24 181/24 182/4 182/9 190/18 191/7 197/23 197/24 198/1 198/7 198/21 198/22 198/22 200/3 226/11 234/10 277/21 291/19 291/20 300/2 300/4	big [6] 278/24 278/25 285/21 287/3 303/14 303/23
bar [14] 137/3 150/6 150/10 150/13 150/14 150/16 187/1 187/11 188/12 188/15 189/4 226/9 271/17 276/8	biology [1] 198/5
bare [3] 164/5 229/4 229/14	birth [3] 154/9 154/11 154/25
barrel [1] 211/18	bit [14] 141/15 143/17 162/4 171/17 198/4 207/9 227/20 235/22 247/18 248/20 254/13 270/17 277/5 298/11
base [1] 201/4	black [11] 201/16 206/20 272/22 282/6 283/16 283/21 287/4 287/4 289/1 294/3 299/3
based [15] 138/13 230/13 235/18 250/13 270/7 275/3 278/8 280/11 281/7 284/5 303/15 303/16 303/24 305/2 305/3	block [2] 271/10 302/19
basic [4] 154/6 154/8 202/18 204/12	block of [1] 271/10
basically [8] 174/15 174/25 186/8 188/12 217/12 261/23 264/4 298/8	blocks [2] 165/15 295/3
basing [1] 277/7	blood [5] 162/2 195/20 195/21 201/12 296/8
basis [5] 183/1 210/3 220/8 220/11 220/24	blow [1] 275/14
be [218]	bludgeon [1] 292/23
bearing [4] 259/19 270/15 270/15 275/8	blue [6] 192/20 269/13 289/12 290/18 290/19 304/10
beat [4] 188/12 189/3 189/3 189/8	blue-and-red [2] 290/18 290/19
	board [2] 229/24 230/2
	bodies [1] 165/25
	believe [36] 137/23 137/24 140/14 152/8 158/6 163/17 166/19 174/6 178/8 179/8 180/14 193/16 202/17 216/25

Case 1:09-cr-00560-RDB Document 60 Filed 08/03/10 Page 180 of 210		
B	248/12 260/11 268/14 280/14 282/20 283/4 283/9	155/14 155/18 155/19 156/2 156/12 156/20 156/22 157/12 157/19 157/21 158/14 159/5 159/10 160/11 164/13 165/6 176/2 176/4 176/13 176/14 180/12 185/17 192/17 271/16 275/23 278/15 289/5 289/10 291/4 291/25 304/3 304/10 305/15
body [7] 153/25 153/25 195/22 201/11 278/6 295/3 304/25	Bureau [1] 269/7 buried [1] 274/12 business [2] 162/20 292/5 busy [1] 287/14 but at [1] 160/6 button [1] 211/23	card [14] 201/20 201/20 201/24 202/8 203/1 203/1 223/11 223/11 223/12 223/15 223/16 223/18 224/10 298/19
boilerplate [9] 248/13 251/6 251/11 252/1 252/14 256/8 262/24 263/8 263/9	C	cards [2] 200/6 200/9 care [1] 287/20 career [3] 145/14 198/14 198/16
Book [1] 269/13 booking [1] 147/3 boom [2] 274/14 278/19 borders [1] 269/20 both [39] 149/21 151/24 153/24 168/20 177/10 177/18 178/10 185/17 185/17 189/17 191/12 203/16 205/25 207/10 213/2 213/5 213/21 214/10 215/9 215/21 217/20 243/8 247/22 271/3 271/3 271/4 272/23 273/8 273/9 274/3 286/18 296/20 299/3 299/3 299/3 302/18 303/11 303/18 303/20	caliber [2] 234/6 259/19 call [15] 146/9 159/14 163/13 163/23 163/25 164/1 172/3 201/6 204/20 214/9 225/10 239/19 244/9 286/21 298/7 called [16] 146/19 146/21 152/3 152/13 152/19 170/6 172/21 184/16 196/13 201/25 225/7 231/25 244/10 244/12 247/8 279/12 calling [2] 232/11 279/16 calls [1] 197/6 calm [2] 161/23 301/2 came [12] 159/5 160/13 161/6 170/18 192/16 222/17 230/10 261/13 290/9 292/8 304/20 306/23 camera [3] 165/10 165/13 298/3 cameras [1] 165/18 can [113] 138/8 138/19 142/22 143/12 143/21 147/2 152/5 156/3 161/7 163/13 164/17 165/5 165/10 168/1 168/20 171/10 171/11 172/2 172/3 172/3 183/18 184/19 184/25 185/13 188/20 189/17 190/2 199/21 200/17 200/24 201/10 201/12 201/21 202/10 202/11 202/15 202/16 202/18 202/18 203/5 203/17 203/21 204/1 206/22 206/23 207/23 208/4 208/17 209/12 211/2 215/16 217/6 217/17 220/21 221/6 221/9 222/14 226/13 226/17 227/23 229/17 230/16 230/22 234/2 236/23 247/18 248/25 261/16 262/9 263/4 263/5 263/5 269/22 271/25 272/2 274/7 275/14 278/17 280/14 281/19 281/22 282/6 283/11 284/4 284/5 284/15 284/16 284/19 284/24 285/11 285/12 285/19 286/12 287/10 287/21 287/22 289/5 289/7 292/1 292/12 292/24 295/21 296/19 296/21 298/18 299/21 300/7 300/14 300/22 300/23 301/9 302/25 303/7 can't [24] 185/4 189/18 190/14 205/12 205/17 205/23 208/21 215/19 223/12 278/14 281/19 281/19 282/7 282/8 289/18 289/20 289/22 289/22 295/19 295/25 296/9 296/9 296/11 296/21 candid [1] 295/19 cannot [1] 301/8 capable [1] 302/1 car [35] 149/12 149/21	careful [2] 279/2 306/15 carefully [1] 208/13 cars [6] 157/8 160/1 160/2 160/3 193/17 293/11 cartridges [2] 216/16 231/9 case [129] 135/6 136/15 137/1 137/5 137/6 139/16 139/17 139/19 144/16 144/17 144/21 144/22 149/20 152/12 154/7 163/15 165/7 165/13 166/17 167/13 167/17 170/16 170/22 174/18 179/1 179/7 179/20 180/12 180/13 180/25 181/20 182/9 182/10 182/11 182/12 182/13 182/17 183/10 184/11 185/4 185/23 186/10 186/17 191/19 196/2 196/22 197/1 197/2 208/7 209/7 209/8 209/22 209/24 210/7 210/8 211/6 211/12 212/2 214/20 218/1 218/16 218/17 220/1 220/15 222/8 225/13 225/23 231/7 231/24 232/5 234/2 235/20 235/25 238/24 239/15 239/18 240/5 241/24 242/9 242/11 242/25 243/5 247/16 247/19 250/3 250/23 251/18 254/10 254/11 254/18 255/6 255/22 255/23 258/6 261/25 262/10 268/14 269/22 270/6 270/10 270/14 275/8 275/15 277/8 277/14 277/20 278/22 279/2 279/14 279/19 280/25 281/18 281/20 281/24 282/15 283/13 283/14 283/20 284/3 284/5 284/12 285/24 288/21 288/22 292/15 297/19 298/22 301/19 307/6 cases [18] 174/19 174/22 178/17 178/21 179/17 196/20 196/21 199/7 199/9 199/10 199/14 199/15 199/16 199/18 209/14 226/19 281/2 283/10 cat [1] 296/5 catch [5] 157/5 175/10 175/11 273/10 273/19 catches [1] 295/22 caught [2] 163/18 180/4 cause [6] 146/14 184/15 191/4 191/10 191/12 191/15 caution [1] 233/9 cautioned [2] 254/3 256/12 cell [2] 287/3 287/4 central [1] 147/3
bottom [15] 172/20 174/23 183/18 184/11 215/7 217/9 218/11 219/21 221/6 221/8 281/18 281/23 288/4 293/15 301/7 bouncers [2] 150/13 189/4 box [5] 168/8 207/21 216/17 222/1 277/17 boxes [3] 221/6 221/9 221/10 BPD [1] 306/19 BPD's [1] 306/18 brand [1] 269/17 Brazil [5] 238/24 269/10 269/12 269/14 269/24 break [8] 205/16 206/24 212/8 222/12 233/10 236/10 237/3 245/15 breakdown [1] 175/20 breaking [3] 156/9 212/7 225/4 breathes [1] 283/7 breeding [1] 286/16 BRENDAN [1] 135/20 brief [4] 138/11 139/4 268/7 273/20 briefly [7] 136/5 146/5 146/17 148/23 150/9 195/4 268/22 bright [1] 291/11 bring [14] 136/3 138/24 138/25 142/22 143/6 144/1 166/14 236/19 239/5 241/22 246/25 267/13 270/11 285/2 broken [1] 205/10 brought [3] 196/25 207/21 276/13 Brunswick [8] 152/10 156/25 157/8 157/18 157/22 271/11 272/9 304/12 brush [7] 274/5 274/6 274/12 274/13 274/13 274/13 278/21 buddies [1] 189/8 built [4] 208/16 271/5 284/14 300/13 bulk [2] 231/13 238/2 bulletproof [4] 271/21 271/22 276/4 303/6 burden [9] 242/13 242/14		

C	301/1 301/10 301/15 301/19 302/13	combine [1] 201/10
century [2] 219/13 219/15	circumstantial [11] 251/14	come [26] 139/22 145/2
certain [12] 191/3 213/1	270/7 277/8 277/19 278/7	159/19 159/22 163/14 170/3
225/15 252/18 281/19 281/19	278/9 278/22 278/23 281/2	203/6 211/15 212/15 219/17
282/7 282/8 289/20 294/22	282/1 307/7	219/19 225/11 232/21 232/21
296/1 301/8	citation [1] 178/14	232/24 233/7 237/3 237/9
certainly [14] 138/7 143/25	citations [2] 254/10 254/12	244/15 283/11 285/1 293/17
154/17 179/16 190/3 196/8	citizen [2] 172/3 173/9	297/4 297/25 298/4 298/8
209/10 219/14 220/16 224/8	citizens [1] 146/2	comes [8] 142/4 142/9 206/15
243/21 258/3 282/1 296/10	City [19] 178/16 178/24	277/17 278/14 280/5 283/18
certainty [3] 281/22 283/12	181/24 182/4 182/9 190/18	305/18
296/10	197/23 197/24 198/1 198/21	coming [4] 153/11 159/11
certification [1] 198/10	198/22 198/22 200/4 226/11	166/2 279/17
certified [2] 200/6 204/2	234/10 277/21 291/20 300/2	commence [1] 136/1
certify [1] 308/11	300/4	commencing [1] 135/12
cetera [2] 261/4 261/4	City's [1] 198/7	comment [1] 217/4
challenge [1] 258/7	civil [9] 179/1 182/11	commentary [1] 217/3
challenges [1] 207/3	182/12 184/6 235/6 260/15	commerce [9] 237/25 259/12
chamber [1] 274/8	261/10 263/21 269/1	259/20 259/25 260/20 262/23
chambers [1] 136/8	civilly [1] 185/11	268/20 269/22 269/23
chance [6] 157/25 201/1	claim [2] 184/17 185/3	commercial [2] 162/20 272/25
228/22 229/4 229/10 280/7	claiming [1] 183/7	commit [2] 163/20 283/4
change [2] 249/15 253/5	claims [1] 172/9	common [5] 270/13 275/21
changed [2] 249/17 264/9	clarification [2] 209/25	282/11 288/6 308/1
changing [1] 258/11	210/2	commotion [1] 296/6
character [2] 183/2 183/5	clarify [2] 259/5 265/24	communications [2] 157/22
characteristics [1] 211/9	class [2] 198/8 224/18	263/15
charge [12] 186/15 235/25	clean [2] 282/18 282/21	community [1] 285/2
245/14 246/20 246/22 259/1	cleaned [1] 161/7	company [2] 211/19 211/20
260/19 261/15 265/5 265/8	cleaning [1] 205/22	compare [5] 203/17 213/18
265/10 308/9	clear [25] 147/20 153/13	219/19 279/9 298/17
charged [9] 144/18 235/16	166/7 169/1 173/15 181/6	compared [1] 274/4
235/20 249/20 260/14 260/18	185/20 185/20 192/18 209/15	comparing [2] 212/25 214/6
280/16 280/24 281/11	209/17 209/19 227/22 227/23	comparison [10] 199/21 199/22
charges [2] 259/3 259/11	241/13 249/4 252/12 260/5	202/10 202/11 205/17 206/1
charging [1] 177/21	289/9 290/12 291/15 294/8	219/24 222/11 222/19 225/14
chase [7] 268/8 272/2 274/21	299/16 304/8 306/8	comparisons [3] 198/13 198/15
276/7 276/23 288/13 290/15	clearly [12] 238/22 240/1	199/4
chased [5] 158/3 272/7	255/21 288/5 290/6 290/20	complainant [1] 136/25
272/20 277/24 280/4	290/25 291/3 302/22 303/3	complaint [8] 146/7 172/3
Chases [1] 273/6	303/4 304/6	172/11 172/14 172/21 173/25
chasing [5] 272/14 273/7	clerk [2] 244/14 244/14	210/16 218/9
277/3 288/14 304/10	client [3] 181/4 232/25	complaints [14] 136/22 136/24
check [10] 161/21 167/8	233/11	146/2 146/4 172/2 172/7
179/13 216/16 221/8 221/9	CLINTON [1] 135/17	173/1 173/8 173/9 173/16
221/19 270/12 275/21 300/22	clock [1] 236/11	173/19 173/23 174/4 178/3
checked [7] 221/6 221/14	close [5] 157/10 270/25	complete [2] 217/10 221/6
221/22 222/1 222/14 269/13	274/2 291/13 293/9	completed [5] 198/6 198/8
272/5	closing [20] 232/24 233/23	214/20 218/1 221/3
checking [1] 179/11	245/18 245/18 246/2 246/13	completely [2] 162/17 238/1
checkmark [1] 264/7	246/23 247/17 247/19 247/21	complicated [1] 172/19
Checks [1] 278/11	247/22 265/25 266/9 267/1	complies [1] 190/9
chest [1] 290/4	267/7 267/14 267/24 275/6	concede [1] 285/25
choke [1] 189/7	280/8 282/14	concern [2] 235/14 257/19
choked [2] 150/23 189/2	closings [2] 277/10 281/11	concerned [3] 159/7 179/23
chooses [1] 307/13	clothed [1] 289/13	194/22
chose [4] 298/6 307/11	clothes [2] 162/23 275/24	conclude [2] 282/4 300/9
307/12 307/14	clothing [1] 289/24	concluded [1] 305/3
Christmas [1] 150/10	cobwebs [3] 296/25 306/10	concludes [2] 231/24 247/16
Circuit [8] 178/16 178/24	307/18	conclusion [2] 242/25 266/9
181/24 182/4 198/22 236/11	Code [2] 234/8 259/21	conclusions [1] 307/8
239/14 239/16	colleagues [1] 144/7	condition [1] 274/9
circular [1] 202/19	collect [5] 224/14 224/21	conditioning [1] 301/2
circular-type [1] 202/19	225/5 279/19 279/20	conditions [2] 208/14 208/15
circumstance [3] 287/18	collected [3] 226/15 226/15	conduct [4] 146/2 187/8
288/10 288/18	228/19	248/10 285/14
circumstances [18] 174/14	collecting [2] 225/16 227/24	conference [23] 173/4 173/13
282/11 283/22 283/25 284/8	collection [3] 224/25 227/18	177/25 185/7 208/2 210/10
286/15 288/20 292/7 295/20	230/4	216/1 217/19 218/25 220/25
296/11 298/25 300/9 300/19	color [1] 274/20	225/19 226/22 227/8 229/1
		232/4 233/14 236/6 237/1

C	154/9 155/6 155/16 156/6 156/7 156/18 157/1 157/8 158/12 159/21 160/7 160/12 162/9 163/5 163/11 163/12 164/11 164/12 165/16 165/17 166/8 166/18 166/24 167/11 168/17 168/18 169/16 169/20 170/4 171/3 171/4 171/24 171/25 172/4 172/17 172/18 172/24 173/24 174/4 174/9 174/14 175/16 176/3 177/21 180/17 180/19 187/3 187/4 187/15 188/4 188/15 191/4 191/24 192/7 192/9 192/22 193/3 193/4 193/5 193/6 193/8 193/12 194/1 195/10 195/17 199/1 200/8 202/5 204/7 207/11 207/12 208/6 209/18 213/4 213/7 213/13 213/22 214/7 214/8 214/11 214/12 214/15 214/18 214/19 214/23 215/7 216/6 218/2 218/3 218/6 218/13 218/14 221/7 221/14 221/15 221/17 221/18 221/20 221/21 221/24 221/25 222/2 222/3 222/21 223/3 223/4 223/7 224/4 224/15 224/23 224/25 225/8 225/9 225/16 227/1 227/5 229/5 229/24 230/10 230/14 230/15 230/17 230/21 230/23 231/4 231/7 231/12 231/14 231/15 233/3 234/21 234/22 235/8 236/1 237/5 237/6 239/20 239/22 241/5 241/18 244/20 249/21 282/13 283/25 284/9 284/11 300/11 300/19 308/11	244/19 248/10 254/14 267/24 count [12] 259/3 259/5 259/5 259/10 259/13 260/12 264/5 264/20 264/24 265/2 297/11 297/11 Count 1 [7] 259/3 259/13 260/12 264/5 264/20 264/24 265/2 country [1] 269/10 couple [4] 167/9 203/19 295/22 296/17 course [6] 198/14 223/5 294/6 294/7 294/13 294/14 court [33] 135/1 135/25 136/1 138/16 139/18 140/7 178/16 178/24 179/12 179/13 181/24 182/4 184/13 186/1 198/18 198/22 198/22 198/23 198/23 198/25 222/7 231/10 231/11 244/14 244/22 248/9 255/17 258/10 259/23 260/13 263/16 300/13 308/15 Court's [3] 137/24 195/1 231/16 courthouse [5] 135/14 182/19 196/21 283/7 284/14 courtroom [12] 144/7 170/18 196/20 196/23 197/3 233/11 237/10 244/15 276/19 277/17 277/18 281/3 courtrooms [1] 283/7 covers [2] 204/19 253/2 CR [1] 135/6 cracking [1] 296/2 Crawford [1] 239/6 create [2] 254/5 256/22 credibility [2] 183/21 252/2 creditably [1] 282/8 crime [36] 163/14 163/23 163/25 164/1 166/2 225/1 225/2 225/3 225/11 226/12 226/15 227/21 235/4 249/18 249/20 253/21 253/23 254/17 254/22 255/1 259/13 259/17 259/23 260/13 261/6 261/7 264/6 264/10 264/11 264/13 265/12 268/6 268/16 268/25 280/24 296/16 crimes [2] 249/16 283/4 criminal [7] 140/18 178/25 181/24 182/9 242/6 263/21 284/25 critically [1] 284/6 cross [16] 138/3 138/10 151/15 151/17 205/24 207/8 209/6 209/11 209/13 212/20 212/23 242/4 250/14 251/8 252/17 296/23 cross-examination [13] 138/3 138/10 151/15 151/17 209/11 209/13 212/20 212/23 242/4 250/14 251/8 252/17 296/23 cross-examinations [1] 209/6 crossed [2] 269/19 269/20 crossing [1] 144/12 cuffed [2] 161/17 292/20 cuffs [4] 161/18 161/19 193/7 305/17 curb [2] 157/10 302/24 current [1] 252/8 cursing [2] 150/23 188/13
----------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

C	defendant's [33] 142/22 154/20 158/10 161/3 167/23 180/13 214/23 215/9 215/11 216/23 217/16 218/4 221/5 232/18 238/2 240/23 240/24 241/11 241/15 247/5 251/16 254/8 257/1 260/15 261/2 268/10 272/3 274/17 274/19 275/6 281/5 288/2 295/7	detective [1] 225/12 determination [7] 149/3 172/10 172/15 176/15 176/19 205/13 223/13 determine [13] 175/17 180/25 202/10 205/10 213/6 222/9 222/10 222/16 254/8 257/2 282/12 284/22 298/17 determined [10] 136/16 175/6 181/8 199/22 203/24 222/24 223/16 224/11 269/9 275/1 develop [1] 230/22 developed [3] 210/23 216/18 221/13 development [1] 199/4 developmental [1] 201/14 Diaz [1] 239/6 did [97] 140/12 148/5 148/17 148/19 149/5 149/9 150/3 150/6 150/20 150/25 155/4 158/4 159/22 160/15 160/19 163/13 163/22 164/1 164/8 165/5 166/13 167/1 167/3 172/16 174/23 175/18 177/16 177/18 186/20 187/11 188/24 191/21 192/11 192/15 194/3 194/5 194/18 194/20 195/5 195/7 195/15 195/19 195/22 195/24 210/18 210/21 210/22 215/1 221/19 222/4 222/20 222/22 223/18 223/20 223/21 223/23 223/24 224/1 224/5 224/7 224/9 234/11 241/8 241/15 242/3 242/10 242/19 242/21 250/7 251/18 257/14 258/4 258/4 259/18 261/24 262/7 267/8 272/12 272/13 273/7 273/16 275/10 276/8 276/9 276/11 279/5 282/3 285/24 287/23 296/24 296/25 305/6 306/14 306/17 306/20 307/3 307/23 didn't [87] 137/24 141/13 141/17 147/17 147/20 147/21 148/2 149/3 150/15 150/18 150/20 150/22 155/21 155/22 156/14 156/20 159/3 159/4 159/5 159/9 159/13 160/17 162/8 162/10 162/17 163/17 163/20 163/21 163/22 163/22 163/25 163/25 164/7 164/8 164/18 164/21 164/22 165/8 165/10 165/12 165/13 165/14 169/6 169/11 170/24 175/11 175/12 175/13 175/13 175/22 175/22 176/10 177/7 180/7 183/20 186/5 189/5 195/21 217/11 222/1 224/8 231/14 250/12 253/15 269/12 271/6 272/1 272/1 273/12 275/20 276/10 277/3 283/4 287/5 292/16 293/13 293/24 298/17 298/18 298/19 299/21 301/3 301/4 303/12 305/1 305/7 305/22 difference [2] 170/10 229/10 different [9] 174/13 175/13 176/20 183/17 196/19 202/12 230/22 283/13 302/10 differently [2] 279/25 288/17 difficult [11] 205/9 211/10
custody [4] 148/20 149/17 177/1 177/1 cut [3] 157/5 158/20 212/7 cylinder [2] 211/14 211/24	defendants [1] 184/10 defense [56] 136/13 136/17 137/9 138/2 138/2 138/8 142/19 169/25 180/20 196/24 220/17 232/11 238/14 239/18 239/19 240/3 241/14 241/15 245/25 246/1 247/5 247/8 247/10 248/18 251/4 251/23 252/5 253/11 253/17 257/5 258/18 258/23 260/21 261/20 262/5 263/25 264/17 265/16 265/22 267/16 270/5 270/12 272/21 275/7 275/9 275/18 275/21 276/15 276/20 277/7 277/17 278/24 279/11 279/23 280/2 280/7 defense's [1] 276/14 defined [2] 235/5 251/19 definitely [4] 159/15 162/20 189/10 222/15 definition [1] 234/7 degree [1] 198/5 deliberate [2] 285/3 300/25 deliberations [2] 242/22 248/1 delve [1] 137/18 democracy [1] 283/6 demoted [3] 148/9 149/22 151/4 denied [2] 239/17 245/12 denies [1] 252/20 department [16] 146/8 146/10 146/11 148/6 148/20 150/25 169/15 172/22 184/2 184/15 191/7 197/23 197/25 234/11 269/6 300/2 depiction [1] 294/9 deponent's [1] 184/9 deposition [12] 179/25 181/22 182/9 182/14 182/17 183/18 184/3 184/7 184/12 186/3 186/4 186/6 describe [1] 296/17 described [5] 156/5 175/25 183/19 294/24 296/5 designated [1] 196/22 designed [1] 234/9 desire [1] 244/3 despite [1] 139/18 destroy [3] 164/10 306/16 307/1 destroyed [4] 223/16 223/18 224/10 298/16 detail [11] 143/3 199/20 202/10 202/14 204/16 205/14 213/1 214/18 221/23 222/13 289/21 detailed [1] 162/25 details [8] 202/12 203/3 203/9 203/11 203/12 203/13 203/14 203/20 detain [1] 176/25	
D		
D-O-R-R [1] 197/13 Dan [1] 269/6 dark [16] 162/15 162/17 163/2 163/4 272/22 272/24 273/2 273/17 276/2 287/19 294/18 299/8 301/12 304/18 304/21 304/24 darker [1] 304/19 darkest [1] 288/6 data [1] 308/12 date [13] 154/9 154/11 154/25 168/7 168/11 168/16 170/10 171/4 171/7 171/18 177/2 177/3 299/16 dates [2] 168/25 250/12 dating [1] 136/23 day [14] 135/11 139/10 152/13 168/16 170/11 220/17 220/20 262/24 286/5 286/21 286/25 286/25 287/10 287/13 daylight [1] 301/2 days [3] 268/3 281/4 296/17 deal [9] 139/10 142/2 142/3 150/17 232/20 236/16 278/24 278/25 285/21 dealing [5] 162/4 185/5 288/11 292/25 304/9 debris [4] 161/7 294/12 296/3 301/13 decide [5] 200/18 242/9 270/1 302/6 307/25 decided [2] 186/7 287/1 decides [1] 304/12 decision [2] 244/19 244/25 declare [1] 169/10 defendant [109] 135/8 135/20 136/13 155/10 157/6 179/11 179/14 180/24 184/14 216/14 217/21 219/16 232/13 234/1 234/21 235/3 236/21 239/12 239/24 240/3 242/10 242/13 242/15 242/16 242/19 242/22 244/23 247/23 249/20 251/18 253/19 253/22 253/23 254/4 254/6 254/15 254/24 255/1 255/5 255/8 255/9 255/21 256/1 256/2 256/3 256/13 256/23 259/11 259/16 260/12 260/13 260/17 261/6 261/9 262/9 262/12 263/13 264/4 264/22 265/4 265/5 265/10 266/14 268/4 268/9 268/15 268/17 268/24 270/2 270/16 271/2 271/3 271/25 272/7 272/13 272/20 273/4 273/6 273/11 273/12 273/12 273/15 273/19 274/21 274/22 275/4 275/13 275/16 275/19 276/7 276/9 276/9 276/23 276/23 277/2 277/23 277/24 277/24 278/1 278/3 278/11 278/13 278/18 280/4 280/16 280/23 281/11 289/1 297/22		

D	224/22 225/2 225/22 227/5 227/11 227/14 227/17 227/19 227/20 228/15 232/22 233/5 233/8 236/8 236/9 236/19 237/14 241/10 242/1 242/3 242/6 242/24 243/18 243/25 244/16 245/17 246/1 246/5 249/1 249/3 254/2 256/11 258/4 259/6 264/4 264/21 265/3 265/4 265/6 265/10 266/1 269/5 270/12 272/13 275/12 279/10 280/3 283/19 283/23 283/24 290/2 293/18 294/21 297/9 297/10 298/6 298/7 298/18 298/19 299/25 306/14 306/18 306/20 307/4	door [2] 270/13 275/22 Dorr [34] 197/6 197/8 197/12 197/18 198/13 198/17 199/6 199/23 200/3 200/11 200/15 200/21 200/24 201/21 202/6 204/4 206/3 207/7 208/9 210/12 210/13 211/8 216/18 216/25 217/9 221/2 231/22 279/4 279/20 280/13 298/8 298/15 306/23 309/9 Dorr's [1] 208/24 dots [1] 203/4 doubt [17] 239/13 242/14 260/11 261/4 271/23 275/4 280/13 280/14 280/15 280/25 281/6 283/1 284/10 300/10 301/14 301/17 302/7 down [26] 147/1 147/7 156/9 157/22 158/3 158/11 160/13 160/22 160/23 166/4 166/5 173/25 195/5 196/12 222/12 231/23 269/4 272/8 272/20 273/15 273/16 303/1 303/14 304/6 304/12 304/12 draft [8] 142/13 248/6 252/8 252/13 253/6 253/16 259/2 262/18 draw [2] 284/4 298/23 drawn [3] 242/20 292/24 298/23 dreadlocks [4] 153/24 153/25 271/4 299/4 dressed [1] 275/23 drew [6] 282/3 282/10 283/16 283/25 300/11 307/8 drinking [3] 150/19 187/25 188/1 driving [4] 147/6 156/22 180/12 293/8 drove [1] 160/9 drug [7] 139/13 144/14 144/20 148/24 243/12 272/19 296/18 drug-trafficking [2] 144/14 144/20 drugs [8] 139/16 144/16 144/17 144/19 144/23 146/19 146/22 148/1 dryer [1] 287/3 due [1] 297/20 duly [2] 145/6 197/8 dumped [1] 195/14 during [7] 198/15 226/6 266/3 268/3 275/6 275/9 275/10 dust [1] 230/25 dusted [1] 223/5 dusting [2] 230/25 231/7 duty [7] 137/3 137/4 150/11 150/11 150/12 187/3 263/7
difficult... [9] 211/10 270/7 288/20 291/12 294/13 294/21 295/1 295/14 298/24 difficulties [2] 226/13 301/15 dignity [1] 187/8 dire [1] 200/12 direct [11] 138/7 139/11 145/10 197/16 225/21 231/12 251/13 277/13 277/16 278/7 282/1 directed [1] 193/11 directly [3] 183/16 226/5 291/10 dirt [3] 274/8 306/9 307/18 dirty [2] 274/8 296/24 discarded [1] 222/25 disclosable [1] 210/3 discourages [1] 280/21 discourtesy [1] 146/6 discoverable [2] 136/15 220/5 discovery [2] 208/12 219/22 discrepancies [4] 203/18 204/1 214/4 214/7 discuss [3] 196/13 196/25 231/23 discussed [12] 136/8 139/17 143/1 143/23 172/1 172/2 174/3 186/25 230/12 243/10 264/19 294/18 discussing [1] 226/8 Discussion [1] 267/19 dismissed [1] 136/24 dispatch [2] 159/14 159/16 displayed [2] 271/19 275/24 displaying [1] 271/23 disposition [3] 179/17 184/8 185/3 dispute [10] 143/18 181/9 234/20 238/11 240/22 302/2 302/3 302/4 303/3 305/5 disputed [1] 261/16 disrespecting [1] 150/16 distance [5] 157/15 157/17 157/19 238/4 293/12 distracted [1] 270/13 district [13] 135/1 135/1 145/20 149/1 151/24 153/2 160/1 165/16 165/18 176/7 198/22 259/15 286/21 diverse [1] 292/2 division [10] 135/2 136/10 136/21 172/6 172/10 172/15 172/25 173/8 173/20 175/6 DNA [6] 167/1 167/3 167/5 195/24 196/1 225/5 do [115] 138/19 142/1 142/11 142/22 144/9 144/18 144/20 145/24 146/25 148/6 151/1 154/11 157/14 161/3 162/10 164/16 164/21 164/24 165/7 165/8 165/12 165/14 166/4 167/2 167/23 176/10 177/9 178/12 178/21 179/2 179/5 179/6 182/15 186/8 186/13 190/6 190/16 191/7 199/12 199/14 199/15 202/8 209/11 210/9 210/13 210/14 210/25 211/4 217/9 219/19 219/23	docket [1] 249/5 document [1] 215/24 documents [1] 179/12 does [30] 139/19 143/14 154/20 168/7 168/11 170/10 170/10 183/4 183/5 197/3 204/4 207/3 213/24 214/3 224/16 225/2 246/13 246/16 253/3 254/5 254/6 256/22 256/23 273/22 278/16 278/19 278/19 292/13 297/18 299/24 doesn't [21] 140/10 181/21 183/10 219/12 219/17 254/18 257/10 274/25 278/13 293/16 294/23 295/17 296/1 297/2 299/5 301/5 303/7 303/8 303/8 304/11 307/7 dog [4] 298/8 298/20 306/19 307/3 dog-ate-my-homework [1] 298/20 doing [10] 159/12 159/13 161/24 181/16 181/16 226/19 293/7 293/14 295/4 301/4 don't [100] 137/23 137/24 139/10 139/16 142/22 143/13 150/16 152/15 154/4 157/24 159/10 159/11 160/2 163/23 165/7 165/8 165/18 166/19 172/7 173/21 174/1 174/19 174/21 175/5 177/11 178/2 178/18 179/2 179/15 181/11 181/12 181/12 184/23 185/5 185/14 185/25 186/12 186/15 193/20 193/22 196/19 205/8 206/25 209/2 209/17 209/18 209/21 213/17 214/13 214/14 214/18 216/9 216/18 216/19 216/25 217/13 219/1 219/5 219/7 219/10 219/19 219/21 219/22 220/20 222/12 225/22 228/9 228/10 232/15 235/21 246/21 248/21 249/22 253/7 254/11 255/2 257/25 258/9 259/1 265/1 283/2 283/11 283/16 284/17 284/20 287/20 287/20 287/24 290/1 290/16 293/19 293/21 298/9 298/13 299/10 299/25 300/2 300/5 300/11 300/21 done [17] 159/25 163/15 163/16 164/2 165/9 167/6 198/15 208/9 209/5 226/18 243/19 243/21 243/25 244/11 261/12 295/18 300/18	E each [12] 147/1 147/4 191/10 200/1 201/7 220/15 224/17 248/6 260/10 290/1 290/2 302/18 earlier [1] 186/25 early [1] 140/1 ears [2] 162/2 296/9 easier [1] 232/23 easily [2] 305/24 305/25

E	escorted [1] 298/1	203/22 214/4 218/18 220/1 251/11
easy [1] 297/15	especially [1] 216/3	exactly [20] 148/25 154/4 160/3 175/5 181/8 186/9 193/20 213/17 214/5 221/4 222/5 226/8 226/16 227/2 227/14 227/16 228/20 240/2 283/16 298/4
educational [1] 198/4	Esq [4] 135/17 135/17 135/19 135/20	examination [20] 138/3 138/7 138/10 145/10 151/15 151/17 191/1 197/16 209/11 209/13 212/20 212/23 221/7 225/23 240/15 242/4 250/14 251/8 252/17 296/23
effort [1] 239/5	essentially [10] 136/16	examinations [1] 209/6
eight [12] 145/17 145/18 145/22 146/1 146/10 151/19 169/7 169/15 191/6 191/13 287/9 287/10	136/17 136/20 137/20 202/3 221/3 238/16 239/1 241/1 257/24	examine [2] 210/18 210/22
eight-hour [2] 169/7 287/9	established [1] 239/1	examined [1] 210/25
Eighteen [1] 154/24	et [2] 261/4 261/4	examiner [5] 197/21 200/6 204/2 211/22 213/9
either [14] 148/7 156/20 167/2 174/1 175/4 175/11 201/23 203/4 205/24 212/10 219/6 219/19 220/23 300/3	etching [2] 211/19 211/20	examiners [4] 198/11 199/25 200/8 223/21
elasticity [1] 206/22	evaporate [3] 205/21 230/16 230/20	example [8] 143/16 205/5 207/7 207/23 208/4 229/16 240/1 244/8
element [19] 141/3 141/5 141/8 235/24 237/19 237/21 238/15 245/10 255/22 255/23 261/2 261/3 261/15 261/22 262/16 262/23 268/23 269/4 269/5	even [24] 150/16 152/12 157/24 158/13 176/10 177/11 177/12 179/22 181/12 182/25 184/24 189/5 192/16 207/4 282/24 284/20 287/5 291/9 292/8 294/20 298/17 300/8 305/14 307/12	exceeding [5] 235/5 259/17 259/24 260/14 261/7
elements [9] 238/10 260/1 260/9 260/11 262/20 268/13 268/21 280/15 297/1	event [6] 170/7 171/18 196/13 231/24 231/25 266/20	exception [3] 196/22 233/21 233/24
elevation [1] 288/3	events [4] 170/14 175/19 175/20 286/7	excessive [1] 184/16
eleven [1] 198/1	ever [6] 146/1 146/11 198/17 208/7 224/22 269/17	excited [2] 161/23 161/25
elimination [1] 200/6	every [8] 207/18 208/7 208/14 209/8 280/23 286/5 300/7 306/25	exclude [2] 214/16 298/18
elongate [1] 206/24	everyone [7] 143/11 146/24 196/24 197/3 267/11 267/22 271/20	excluding [1] 298/14
else [12] 161/1 161/13 166/17 166/21 176/18 194/3 223/19 257/11 261/17 276/25 279/10 291/13	everything [9] 148/3 148/3 156/8 158/1 159/25 161/9 161/23 171/15 195/14	excuse [8] 151/21 154/23 219/8 232/18 233/7 233/12 236/23 245/13
embarrassing [1] 150/6	everywhere [1] 199/8	excused [7] 196/16 232/2 232/23 237/8 237/12 247/20 248/2
embellish [1] 277/1	evidence [120] 165/6 166/13 166/14 166/15 166/23 174/24 180/5 180/22 181/17 186/21 194/23 214/24 215/20 215/21 216/15 217/17 217/22 224/15 224/21 224/25 225/5 225/6 225/16 226/18 226/25 227/4 227/18 227/25 228/18 230/4 233/15 233/22 233/24 234/2 234/2 234/14 234/20 234/23 235/8 235/11 238/1 238/3 239/11 239/24 240/2 240/3 240/6 240/10 240/14 240/24 241/2 241/3 241/4 242/12 243/23 247/5 247/6 247/7 248/11 250/3 250/13 251/14 251/15 252/14 252/17 252/21 252/25 253/1 253/19 253/25 254/3 254/6 254/15 254/19 254/23 255/11 256/1 256/5 256/12 256/23 258/3 258/5 258/10 261/13 269/2 270/8 270/17 270/24 274/5 277/8 277/13 277/16 277/19 278/7 278/8 278/22 278/23 279/12 279/16 279/16 279/19 281/3 281/5 281/7 281/9 281/20 282/1 282/22 282/23 285/3 288/22 291/15 297/19 301/18 304/5 306/12 306/13 307/6 307/21 308/4	excuses [1] 298/10
embellishing [1] 274/18		exhibit [39] 154/20 158/10 161/3 167/23 180/13 180/14 180/14 180/16 180/18 180/20 180/21 180/22 180/24 210/13 215/12 216/14 216/23 217/21 218/5 234/13 234/17 234/19 234/23 235/1 235/11 235/13 236/4 240/9 241/7 241/8 241/11 241/11 241/12 241/14 241/16 288/2 288/2 294/5 295/8
emergent [1] 297/22		Exhibit 13 [1] 216/14
employed [1] 197/22		Exhibit 14 [1] 215/12
employees [1] 137/3		Exhibit 9 [1] 241/16
emptied [1] 164/14		exhibited [2] 180/23 258/8
encounter [2] 289/11 293/6		exhibiting [1] 258/1
encourages [1] 280/22		exhibits [11] 217/16 217/20 239/24 240/5 240/14 240/23 240/24 241/1 247/5 251/14 308/2
end [16] 152/25 173/13 185/7 210/10 217/19 220/25 226/22 229/1 233/14 237/1 284/2 286/19 286/21 286/23 287/8 299/9		Exhibits 1 [2] 240/23 241/1
ended [8] 146/19 147/13 147/15 149/15 149/15 150/22 168/22 168/23		Exhibits 13 [1] 240/14
ending [1] 203/5		existence [2] 284/8 301/10
enforcement [1] 258/20		exists [1] 261/17
engage [1] 192/1		expand [1] 206/22
engaging [1] 189/20		expect [3] 162/8 190/12 286/3
Engert [1] 144/2		expecting [1] 297/4
enjoy [1] 267/1		expel [2] 234/9 234/11
enough [19] 178/20 186/21 199/19 202/9 203/24 204/15 204/16 209/23 211/15 212/14 228/10 228/12 228/25 273/2 276/5 282/20 282/24 293/23 298/16		experience [8] 207/13 207/17 208/20 208/25 209/20 284/20 303/16 305/3
ensure [2] 137/7 174/8		
entering [1] 225/4		
entire [2] 145/19 242/15		
entirely [1] 237/19		
entitled [1] 308/11		
entrust [1] 284/20		
envelope [4] 195/14 228/10 230/11 279/21		
equally [1] 249/19		
	evidenced [1] 180/13	
	evolving [1] 290/23	
	exact [11] 141/21 175/12 185/15 202/21 203/11 203/22	

<div>Case 1:09-cr-00560-RDB Document 60 Filed 08/03/10 Page 186 of 210</div> <div>E</div> <div>experienced [1] 277/21 expert [25] 144/11 198/18 198/24 199/3 200/11 200/15 200/16 200/20 210/3 216/2 220/16 224/24 225/14 226/4 226/24 227/17 229/22 238/22 238/22 238/25 239/4 251/9 258/15 276/17 307/22 expertise [2] 227/10 227/24 experts [1] 220/18 explain [10] 140/7 140/9 146/17 148/23 150/9 200/24 201/21 211/8 236/21 308/5 explained [1] 227/9 explaining [2] 157/7 231/13 explanation [4] 144/24 282/24 282/25 286/10 explanations [1] 292/10 explore [1] 226/13 exploring [1] 226/4 explosive [2] 234/10 234/12 Explosives [1] 269/7 expressing [1] 141/23 extent [6] 137/18 138/1 248/24 266/16 266/18 294/20 extra [2] 146/21 270/6 extremely [1] 301/12 extrinsic [1] 181/17 eye [1] 291/12 eyes [4] 152/23 278/20 291/10 294/17 eyesight [1] 287/20 eyewitnesses [3] 277/13 277/22 277/23</div>	<div>291/24 294/8 fairly [4] 179/11 209/19 248/13 291/22 faith [1] 183/1 fall [2] 294/15 294/23 fallibility [1] 285/1 fallible [1] 285/10 falling [1] 303/14 false [1] 178/5 falsely [2] 177/21 177/21 family [1] 149/11 far [5] 157/20 160/23 185/5 194/16 297/14 fast [5] 158/1 273/10 294/14 295/21 297/8 favorable [1] 239/11 FBI [2] 198/9 224/4 fear [1] 288/11 federal [5] 198/23 231/10 231/11 251/7 252/15 feel [3] 257/9 291/17 292/9 feelings [6] 254/1 254/1 254/8 256/9 256/10 257/1 feet [5] 278/3 293/8 295/1 302/6 304/15 fell [1] 287/3 felony [1] 262/13 fenced [2] 158/21 295/12 few [9] 146/13 148/21 150/7 157/14 237/9 237/11 237/16 280/5 302/5 fibers [1] 225/6 field [4] 198/5 200/11 200/15 238/21 Fifteen [3] 245/21 245/22 245/25 fight [6] 150/7 150/22 187/1 188/24 189/6 307/19 fighting [2] 160/25 305/16 figure [1] 208/5 file [9] 138/14 138/15 146/7 172/3 176/23 177/7 182/19 219/4 219/5 filed [22] 146/9 172/2 173/1 173/8 173/16 177/8 177/10 178/5 178/7 178/10 178/15 179/13 179/13 181/11 184/20 185/1 193/17 249/3 266/17 266/23 285/15 296/4 files [2] 136/14 136/21 final [1] 300/23 finalized [1] 266/2 finally [3] 150/5 256/21 263/15 find [28] 162/21 179/14 180/5 194/3 194/5 203/21 211/21 212/9 213/12 219/22 222/1 222/4 222/20 239/12 252/4 264/4 264/21 265/3 265/4 265/10 278/17 279/5 290/9 295/14 297/15 300/3 306/21 307/2 finding [4] 136/25 187/20 216/22 300/1 findings [1] 137/4 finds [2] 244/22 274/1 fine [13] 138/19 139/18 139/21 141/25 173/12 208/11 208/23 244/6 245/1 250/17 260/7 262/21 265/7 finger [4] 202/15 202/16</div>	<div>204/20 222/17 fingerprint [19] 198/8 198/13 198/24 199/4 199/4 200/11 200/16 201/24 203/1 203/12 204/21 220/18 224/16 225/5 225/14 230/19 230/23 279/6 279/7 fingerprinted [1] 202/3 fingerprints [14] 195/15 199/11 207/13 207/24 212/25 225/16 230/13 251/9 278/25 279/1 279/24 280/1 306/13 306/17 fingers [2] 164/18 202/2 fingertips [3] 164/19 195/12 201/4 finish [2] 277/10 281/10 finished [1] 267/6 fire [1] 163/22 firearm [57] 144/12 163/8 166/8 166/10 166/12 210/20 211/1 211/2 211/5 211/9 211/11 212/3 225/23 229/17 229/23 229/23 230/4 231/8 234/7 235/17 237/24 238/6 257/11 259/11 259/18 259/25 260/18 261/10 261/23 262/19 262/23 264/5 265/11 268/5 268/8 268/9 268/18 268/19 269/9 269/18 269/19 270/2 270/2 270/16 274/1 274/3 274/11 274/25 275/2 275/4 279/3 281/21 281/23 285/23 289/2 294/1 296/14 firearms [11] 144/11 167/7 207/14 207/24 207/24 211/22 230/11 238/19 269/7 269/14 269/17 fired [3] 148/11 234/10 279/14 first [47] 139/11 139/22 153/4 153/8 155/22 159/8 166/7 167/1 174/6 174/7 174/7 181/4 183/22 185/22 186/8 202/8 202/14 206/16 216/5 228/3 228/5 229/20 237/18 250/8 254/23 255/15 255/24 256/6 260/5 260/12 261/1 261/3 262/16 267/25 268/15 268/21 268/23 273/22 283/17 283/23 286/18 288/23 290/1 293/5 293/6 293/18 294/4 firsthand [1] 270/10 fit [1] 254/18 fits [1] 255/2 five [3] 146/20 174/16 174/20 fixed [1] 249/12 flashing [2] 192/20 304/11 flashlight [17] 160/6 160/19 162/18 162/22 163/3 272/17 272/17 272/19 273/4 273/24 274/14 291/4 292/22 294/20 303/6 304/20 305/20 fled [2] 185/16 254/19 flee [4] 253/20 254/16 254/24 256/2 fleeing [2] 254/20 257/23 flex [2] 152/2 152/3 flight [17] 253/17 253/22</div>
<div>F</div> <div>F.2d [1] 239/14 F.3d [1] 239/16 Fabien [3] 136/20 145/5 309/3 face [2] 153/12 291/6 faces [1] 288/5 facing [1] 153/10 fact [30] 140/21 144/19 149/5 150/20 170/2 170/24 172/16 179/15 183/8 183/10 223/24 229/22 230/13 235/18 239/12 242/19 252/21 252/22 257/22 261/16 269/1 269/14 280/3 286/20 287/15 293/3 293/22 295/22 297/17 302/24 factor [8] 204/13 204/13 205/2 205/2 205/18 238/16 287/19 291/2 factors [3] 204/10 204/12 226/7 facts [24] 139/16 170/9 172/11 172/16 174/19 174/22 180/12 181/12 185/15 252/19 252/24 255/6 270/14 275/3 275/8 275/10 275/11 275/12 275/13 275/15 275/15 282/21 302/10 308/4 factual [1] 238/11 failed [5] 137/5 137/7 146/13 174/8 176/23 failing [2] 148/20 171/24 fair [9] 153/9 161/3 191/13 206/3 209/8 228/12 228/25</div>		

Case 1:09-cr-00560-RDB Document 60 Filed 08/03/10 Page 187 of 210			
F	<p>202/22 203/4 203/7 203/10 203/12 203/15 203/19 204/14 204/20 204/22 205/10 205/12 205/16 206/24 211/15 213/15 222/9 222/11 222/13 222/15 222/17 222/19</p> <p>flight... [15] 253/25 254/3 254/5 254/6 254/25 255/5 255/8 255/21 256/2 256/9 256/12 256/22 256/23 258/14 292/12</p> <p>floor [1] 189/7</p> <p>Florida [1] 269/15</p> <p>flow [6] 202/16 202/21 202/23 202/23 203/5 203/7</p> <p>flowed [1] 273/2</p> <p>flowing [2] 202/20 205/13</p> <p>fluids [1] 195/22</p> <p>flush [1] 232/25</p> <p>flyer [2] 153/22 153/23</p> <p>focus [7] 270/14 271/6 275/8 275/10 275/11 275/12 275/13</p> <p>focused [1] 271/7</p> <p>followed [5] 192/9 272/10 304/6 304/14 304/22</p> <p>following [2] 260/10 260/16</p> <p>follows [4] 242/10 255/7 259/14 266/7</p> <p>foot [3] 268/8 296/2 296/2</p> <p>footprint [1] 204/6</p> <p>for lunch [1] 233/12</p> <p>force [5] 139/13 145/14 146/6 184/16 291/23</p> <p>foregoing [1] 308/11</p> <p>foreign [3] 259/12 268/20 269/23</p> <p>foremost [1] 237/19</p> <p>forensic [2] 281/20 297/19</p> <p>foreperson [3] 263/19 263/22 264/3</p> <p>forgot [1] 215/2</p> <p>form [8] 173/6 177/4 208/3 221/5 261/24 262/7 264/3 278/21</p> <p>formally [1] 236/23</p> <p>formation [1] 202/23</p> <p>former [1] 184/6</p> <p>forty [1] 155/5</p> <p>forty pounds [1] 155/5</p> <p>forward [1] 145/2</p> <p>found [36] 137/1 137/5 137/6 161/14 165/11 172/22 174/24 178/22 187/14 187/17 188/8 194/1 194/19 207/20 208/15 221/23 222/5 222/8 222/13 234/8 238/13 274/15 274/25 278/18 279/24 279/25 285/16 289/2 296/14 297/7 298/5 302/5 305/21 305/23 305/23 305/25</p> <p>foundation [1] 210/6</p> <p>four [6] 174/20 203/10 221/9 221/10 288/22 300/17</p> <p>fourth [5] 221/11 236/11 239/14 239/16 289/1</p> <p>frame [1] 301/12</p> <p>frank [1] 219/25</p> <p>frankly [3] 182/22 219/10 219/17</p> <p>free [9] 138/7 179/16 227/17 227/18 258/3 258/7 266/5 266/8 269/2</p> <p>friction [32] 199/19 201/2 201/6 201/6 201/7 201/13 201/23 202/9 202/13 202/15</p>	<p>201/2 201/6 201/7 201/13 201/23 202/9 202/13 202/15 203/4 203/10 203/12 203/15 203/19 204/14 204/20 204/22 205/12 205/16 206/24 211/15 213/15 222/9 222/11 222/13 222/15 222/17 222/19</p> <p>friction-ridge [27] 201/2 201/6 201/7 201/13 201/23 202/9 202/13 202/15 203/4 203/10 203/12 203/15 203/19 204/14 204/20 204/22 205/12 205/16 206/24 211/15 213/15 222/9 222/11 222/13 222/15 222/17 222/19</p> <p>friend [1] 189/3</p> <p>front [4] 160/11 273/13 276/18 304/21</p> <p>FUCHS [32] 135/17 137/16 138/21 139/17 145/8 145/11 151/14 164/23 167/9 172/1 174/3 190/22 191/2 192/6 195/3 197/4 233/16 234/3 234/14 234/24 237/5 253/9 259/6 264/12 265/6 277/11 280/8 296/23 297/21 299/23 301/23 308/8</p> <p>Fuchs' [1] 282/15</p> <p>full [3] 163/6 298/12 301/13</p> <p>fuller [1] 274/5</p> <p>furnished [1] 154/1</p> <p>furrows [1] 204/19</p> <p>further [16] 138/21 138/23 138/25 151/13 158/13 196/3 212/18 231/18 232/7 247/7 264/19 265/18 265/21 266/10 266/13 277/9</p> <p>furthermore [2] 137/4 293/6</p> <p>furtherers [1] 286/10</p>	<p>Giglio [2] 136/15 137/24</p> <p>give [28] 159/6 184/25 200/17 200/18 200/20 207/18 207/23 208/4 223/21 233/10 233/13 236/9 236/21 244/6 245/1 250/7 250/11 250/15 251/11 253/15 255/18 277/12 282/20 282/24 284/3 287/25 292/4 298/10</p> <p>given [15] 147/8 181/22 198/7 198/8 199/24 228/22 247/18 250/2 250/4 251/6 254/7 255/17 257/1 259/25 266/22</p> <p>gives [3] 181/18 282/22 290/11</p> <p>giving [3] 147/15 263/11 263/13</p> <p>glad [2] 142/1 142/10</p> <p>glass [2] 205/5 294/12</p> <p>gloved [1] 229/6</p> <p>gloves [5] 164/7 164/21 164/22 229/9 229/9</p> <p>go [44] 139/8 140/22 141/16 142/11 142/14 142/21 142/24 143/3 147/4 149/12 160/23 161/1 161/13 161/13 163/1 165/6 173/25 183/9 185/4 188/20 203/3 203/14 203/20 215/19 224/17 234/24 236/23 240/1 243/8 245/14 248/8 249/2 250/15 251/1 267/23 268/21 268/21 275/17 277/5 277/5 294/14 297/10 300/23 308/2</p> <p>goes [5] 183/21 225/3 278/13 278/15 278/19</p> <p>going [127] 136/6 137/18 138/16 140/24 141/11 141/12 141/15 141/15 141/16 141/17 142/6 142/19 143/24 149/3 151/23 153/2 154/19 158/1 158/9 158/20 159/4 159/12 161/2 166/4 167/22 168/14 176/19 178/3 179/16 180/7 181/17 183/20 183/24 184/5 184/25 189/15 195/8 202/14 202/16 202/25 203/3 204/16 205/1 207/4 208/6 209/13 210/12 212/3 212/8 212/9 213/12 213/20 214/10 214/16 214/22 215/17 215/18 219/18 219/23 225/24 225/25 226/11 226/16 232/13 232/18 232/18 232/19 232/20 232/22 232/25 233/1 233/10 236/22 237/3 237/10 239/19 239/25 241/10 242/9 245/13 245/14 245/24 246/6 246/19 247/17 247/17 250/15 250/18 250/21 250/25 251/5 254/21 255/18 266/6 266/7 267/3 270/4 272/21 275/7 275/9 275/19 276/25 277/5 278/24 279/11 279/23 279/23 280/2 280/9 281/16 284/2 284/3 286/5 286/6 288/12 291/12 291/12 292/11 293/18 293/20 294/15 295/5 297/9 297/23 298/9 299/24 307/13</p> <p>gold [3] 276/1 276/1 276/1</p>
	<p>G</p> <p>gather [1] 142/25</p> <p>gave [3] 144/12 176/17 179/24</p> <p>gears [1] 145/13</p> <p>general [3] 213/19 231/6 255/16</p> <p>generally [2] 258/15 263/17</p> <p>gentleman [1] 209/6</p> <p>gentlemen [27] 144/9 196/17 198/3 199/6 199/17 200/20 202/6 206/17 211/8 233/20 235/12 237/2 237/8 247/16 268/2 277/8 278/23 280/11 281/1 281/7 282/19 285/18 297/2 298/21 301/7 301/14 301/25</p> <p>get [39] 147/2 148/19 149/11 150/22 156/14 156/20 157/10 157/25 164/7 165/6 188/24 194/23 209/22 210/7 211/25 219/5 230/19 231/14 236/11 247/18 250/9 256/7 257/14 263/4 266/3 273/20 283/3 284/19 292/19 293/9 293/19 295/9 295/11 296/21 300/21 303/8 305/15 305/16 307/19</p> <p>gets [3] 254/11 291/25 299/23</p> <p>getting [7] 136/7 149/15 149/16 150/6 188/25 208/22 228/24</p>		

G	gone [4] 171/7 236/20 250/8 251/17 good [23] 136/2 143/11 144/2 144/4 168/4 183/1 197/18 197/19 205/6 221/12 229/4 267/11 267/22 268/2 274/9 278/21 281/16 287/7 290/11 293/13 296/22 299/10 301/25 good-faith [1] 183/1 got [53] 147/19 150/12 150/23 151/2 155/14 156/1 158/14 158/22 159/15 166/17 168/24 174/18 177/11 177/11 177/17 177/18 187/1 188/10 188/12 188/12 188/14 188/15 189/2 189/3 189/3 189/6 189/7 189/8 191/24 221/12 237/11 248/7 253/16 262/22 265/3 271/15 271/18 275/23 289/4 291/4 294/22 295/8 296/8 298/3 298/15 302/16 302/24 302/24 303/6 304/9 304/10 305/17 306/24 gotten [4] 208/12 209/9 209/15 306/10 government [81] 135/18 137/11 138/24 139/1 140/1 141/16 142/16 144/17 145/5 178/25 196/24 197/5 197/8 200/10 216/5 220/19 232/9 233/18 234/1 234/23 235/11 236/7 237/5 237/7 237/13 239/11 241/8 242/4 242/5 245/17 246/9 247/4 247/13 247/22 247/23 248/10 248/16 249/16 251/4 251/8 251/20 252/5 252/7 253/8 255/12 256/15 257/3 258/16 258/21 260/10 260/21 261/3 261/18 262/3 262/14 263/11 263/23 264/8 264/15 265/14 265/19 266/11 267/25 268/3 268/13 270/10 275/3 275/7 277/7 280/2 280/14 280/24 281/8 281/25 282/17 283/2 284/13 292/12 297/8 298/8 302/7 Government's [33] 180/13 180/14 180/16 180/18 180/22 180/24 182/22 210/13 232/5 234/16 234/19 234/25 235/13 236/4 240/20 241/8 241/10 241/12 241/13 249/6 250/11 250/21 250/25 253/15 266/17 268/12 270/6 276/16 282/20 284/4 288/21 294/5 298/21 grab [2] 165/10 272/1 grabbed [1] 272/19 grabbing [7] 156/17 288/24 293/4 293/22 293/24 293/24 307/12 grand [1] 259/1 grandmother's [1] 149/12 granted [1] 220/22 grease [1] 201/12 great [4] 205/5 219/10 295/13 303/3 greater [1] 177/4 greet [1] 290/1 grip [1] 211/12	grips [1] 306/24 ground [9] 273/20 286/16 294/16 294/23 295/25 296/10 305/5 305/11 305/13 grounds [2] 225/20 225/22 guard [3] 158/25 290/9 290/10 guarded [1] 298/3 guess [12] 147/2 150/16 155/9 159/3 168/8 168/14 172/18 181/13 204/5 208/5 219/1 265/4 guilt [14] 253/17 254/1 254/1 254/2 254/5 254/5 256/10 256/10 256/11 256/14 256/22 258/13 268/11 281/5 guilty [28] 239/12 242/13 253/24 254/7 255/9 256/3 256/24 257/10 257/11 260/12 262/9 262/12 264/7 264/7 264/14 264/14 265/12 265/13 280/16 281/11 284/19 284/23 292/13 300/1 300/3 300/12 301/20 308/6 gun [101] 145/24 146/22 146/23 147/7 147/7 147/9 147/14 147/14 160/15 160/17 161/22 161/22 162/21 163/23 164/2 164/4 164/16 164/19 164/24 166/14 167/6 175/20 187/12 193/11 193/14 193/21 194/1 194/11 194/18 195/9 195/16 195/19 196/1 207/20 208/14 211/18 212/11 212/13 218/6 221/23 222/4 222/20 222/23 226/17 227/4 230/10 269/13 271/20 273/18 273/23 273/23 274/6 274/6 274/16 276/3 276/24 277/2 277/4 278/16 278/17 278/20 278/20 278/20 279/13 279/14 279/19 279/20 279/21 279/21 279/25 280/5 280/6 282/4 282/5 282/7 283/13 283/17 283/19 283/22 289/25 291/9 292/22 294/3 295/10 295/13 296/15 297/2 297/7 297/23 297/25 298/3 298/5 302/8 303/17 303/25 304/25 305/4 305/4 305/19 307/15 307/24 guns [7] 146/22 147/25 194/9 207/10 207/10 207/10 208/19 guy [16] 147/4 147/6 147/6 147/8 147/18 150/23 155/8 173/9 183/20 185/19 186/7 186/8 188/13 189/1 189/3 304/10 guy's [4] 147/15 175/1 175/2 175/21 guys [5] 146/18 147/5 147/6 185/14 185/15	174/20 176/21 177/1 177/16 180/1 182/4 186/1 186/8 186/16 186/18 186/20 189/1 193/21 198/14 221/3 221/22 226/24 235/3 235/6 243/4 243/7 250/7 250/10 263/21 268/24 269/1 269/8 269/17 269/19 269/20 270/23 271/4 271/4 271/17 271/19 271/20 271/21 272/17 273/12 274/11 276/3 279/24 280/7 282/4 285/15 285/16 285/25 287/13 287/13 287/14 288/12 289/17 289/25 290/19 290/19 290/20 291/4 291/8 291/9 291/11 294/17 296/4 296/17 296/25 297/25 299/7 304/20 305/14 305/15 306/10 hadn't [2] 152/12 166/10 hair [2] 225/5 299/3 half [1] 160/1 halfway [1] 221/11 hammer [1] 212/2 hand [16] 197/7 201/3 204/1 212/12 221/8 222/18 242/8 273/13 274/17 274/19 294/25 295/2 295/6 303/21 304/23 305/11 handcuffs [1] 273/20 handed [2] 175/3 212/12 handgun [2] 166/5 216/16 handguns [2] 207/19 306/24 handle [8] 164/8 164/16 164/17 166/3 208/16 208/16 226/17 279/4 handled [5] 164/8 164/19 229/3 279/25 297/18 handling [1] 297/20 hands [7] 164/5 195/10 201/8 204/23 229/4 229/14 303/6 handwriting [2] 215/6 220/18 happen [2] 162/7 307/9 happened [31] 146/17 147/13 148/23 149/14 150/9 150/21 168/20 170/7 170/11 170/13 171/5 171/8 171/18 172/23 174/15 175/19 175/21 183/7 183/8 183/14 188/13 188/23 209/14 276/19 282/17 286/1 286/4 287/13 290/24 299/16 299/17 happening [3] 156/7 158/1 277/22 happens [6] 144/21 156/9 205/18 293/6 307/16 307/17 hard [11] 146/7 205/5 273/10 288/9 290/23 293/7 295/11 295/23 296/7 300/25 307/2 harder [1] 207/4 has [62] 138/14 140/8 140/13 140/16 140/19 144/20 172/22 173/8 178/23 181/22 201/8 202/3 208/9 209/20 211/19 212/14 216/9 218/18 219/9 225/22 225/25 226/13 229/8 233/11 233/18 238/24 238/25 239/7 241/19 242/11 244/23 244/24 245/9 245/10 247/4 249/17 251/4 253/17 255/23 257/13 259/22 260/15 261/8 263/12 268/3 268/15 269/5
H	had [100] 136/20 137/17 143/23 144/15 147/6 149/11 150/19 152/10 153/22 153/22 153/24 155/11 157/4 157/14 157/24 157/24 159/4 159/16 159/16 160/25 161/1 161/12 163/18 163/22 164/16 165/20 166/5 167/10 168/15 171/23		

H	238/17 245/14 246/20 247/21 250/24 254/18 255/21 256/25 261/15 263/9 263/19 266/3 269/11 271/20 271/22 280/17 280/18 283/8 283/14 285/10 285/21 286/14 297/13 297/13 301/4 302/2 303/8	278/2 278/6 278/8 278/8 278/9 278/11 278/12 278/15 278/20 279/3 288/12 288/24 289/24 289/25 290/3 290/4 290/9 290/15 292/22 293/4 293/4 293/22 293/24 294/17 294/25 296/2 296/8 296/9 303/6 303/12 303/13 303/15 303/21 303/21 303/22 303/23 303/24 304/3 304/23 304/25 305/2 305/6 305/10 306/12 307/3 307/3 307/12
has... [15] 270/10 273/24 275/3 279/14 280/7 280/14 280/24 281/25 285/1 287/4 288/5 293/25 299/16 302/7 302/16	here's [4] 179/19 179/22 291/2 298/5	hit [6] 195/13 273/14 295/24 296/9 305/5 305/12
hasn't [2] 215/18 279/15	herein [1] 308/9	hitting [2] 157/11 293/10
hat [2] 150/14 150/18	hesitate [1] 305/2	hmm [1] 178/6
have [246]	hey [10] 147/18 163/13 165/5 271/25 272/2 276/9 277/3 278/17 292/1 298/18	hold [7] 139/6 176/15 235/23 283/2 293/20 294/21 303/25
haven't [6] 170/15 179/1 184/24 209/9 216/8 300/4	hidden [3] 274/13 305/24 306/6	holding [4] 212/16 273/13 303/17 303/24
having [17] 138/15 138/15 144/18 145/5 174/7 179/18 232/21 237/13 243/10 259/12 259/16 262/12 264/5 264/10 265/11 268/5 293/9	high [5] 139/13 144/14 144/20 283/2 296/16	holstered [2] 271/20 276/3
Hayden [1] 196/22	high-crime [1] 296/16	home [2] 146/23 286/24
he [424]	high-intensity [3] 139/13 144/14 144/20	homework [4] 298/9 298/20 306/20 307/3
he's [34] 181/20 181/23 183/9 183/17 184/4 184/19 185/1 208/7 209/6 209/13 209/16 210/4 215/24 216/8 239/3 266/7 273/7 274/25 275/23 276/24 285/20 292/13 294/19 294/20 294/22 295/3 295/20 296/7 296/8 296/12 303/6 304/9 304/10 307/18	highly [2] 141/22 298/22	homicide [2] 199/9 279/15
head [5] 162/14 182/1 232/10 233/2 259/9	highly-legal [1] 141/22	homicides [1] 225/4
headlights [1] 192/19	hill [2] 202/23 288/4	honor [158] 136/5 136/11 137/12 137/15 137/17 138/9 138/11 138/22 139/2 139/5 139/9 140/13 141/7 141/19 142/8 142/12 142/17 143/22 143/23 144/4 144/25 151/13 151/16 154/16 171/20 173/2 173/5 173/12 177/23 178/2 178/8 178/12 178/19 178/22 180/17 180/19 181/19 181/22 182/15 183/23 186/22 188/5 189/22 190/2 190/23 192/3 195/1 196/3 196/7 196/10 197/5 200/10 200/13 200/22 206/8 207/15 207/25 210/9 212/18 212/21 215/2 215/17 215/22 215/23 216/2 216/10 216/20 217/15 217/18 218/22 219/3 225/17 226/21 228/5 229/25 230/4 231/16 231/21 232/6 232/12 233/17 233/18 234/4 234/15 234/22 234/25 235/10 236/2 236/8 236/25 237/6 237/18 238/7 239/22 240/4 240/13 240/21 241/6 245/7 245/19 245/21 245/23 246/6 246/15 246/18 247/9 247/11 247/14 248/17 248/19 248/23 249/8 249/13 250/17 251/22 251/24 252/7 252/10 253/3 255/13 255/16 256/17 257/4 257/6 257/17 258/17 258/19 258/22 258/24 259/7 260/2 260/23 260/25 261/19 261/21 262/4 262/6 262/21 263/1 263/4 263/24 264/1 264/9 264/16 264/18 265/7 265/15 265/17 265/20 265/23 266/12 266/15 266/24 267/15 267/17 268/1 281/15 301/24
head [5] 162/14 182/1 232/10 233/2 259/9	him [87] 138/14 139/15 144/1 149/3 149/6 149/7 149/16 149/16 150/20 153/8 153/23 156/2 156/12 157/5 157/23 157/24 158/4 159/6 159/13 161/19 161/19 161/20 172/2 176/9 176/19 176/20 178/5 179/8 180/11 182/2 183/21 184/20 185/1 185/1 186/18 186/20 186/21 208/13 209/12 227/18 227/23 228/17 230/3 230/7 232/16 235/24 236/21 242/20 270/19 272/1 272/2 272/14 273/7 273/17 273/19 273/22 273/23 274/10 277/3 277/4 278/2 278/4 278/5 278/7 278/16 280/4 283/20 283/21 285/14 288/24 290/10 290/22 293/22 293/23 293/24 294/20 295/22 299/25 302/23 304/6 304/10 304/14 304/15 304/23 305/10 305/13 305/17	homicide [2] 199/9 279/15
headlights [1] 192/19	himself [1] 139/13	honor [158] 136/5 136/11 137/12 137/15 137/17 138/9 138/11 138/22 139/2 139/5 139/9 140/13 141/7 141/19 142/8 142/12 142/17 143/22 143/23 144/4 144/25 151/13 151/16 154/16 171/20 173/2 173/5 173/12 177/23 178/2 178/8 178/12 178/19 178/22 180/17 180/19 181/19 181/22 182/15 183/23 186/22 188/5 189/22 190/2 190/23 192/3 195/1 196/3 196/7 196/10 197/5 200/10 200/13 200/22 206/8 207/15 207/25 210/9 212/18 212/21 215/2 215/17 215/22 215/23 216/2 216/10 216/20 217/15 217/18 218/22 219/3 225/17 226/21 228/5 229/25 230/4 231/16 231/21 232/6 232/12 233/17 233/18 234/4 234/15 234/22 234/25 235/10 236/2 236/8 236/25 237/6 237/18 238/7 239/22 240/4 240/13 240/21 241/6 245/7 245/19 245/21 245/23 246/6 246/15 246/18 247/9 247/11 247/14 248/17 248/19 248/23 249/8 249/13 250/17 251/22 251/24 252/7 252/10 253/3 255/13 255/16 256/17 257/4 257/6 257/17 258/17 258/19 258/22 258/24 259/7 260/2 260/23 260/25 261/19 261/21 262/4 262/6 262/21 263/1 263/4 263/24 264/1 264/9 264/16 264/18 265/7 265/15 265/17 265/20 265/23 266/12 266/15 266/24 267/15 267/17 268/1 281/15 301/24
hear [14] 156/2 186/5 236/10 237/15 254/14 275/7 277/10 277/11 277/12 280/20 285/3 289/7 296/9 296/9	hinder [3] 211/20 301/5 301/16	Honorable [1] 135/13
heard [35] 160/5 180/1 238/3 238/4 250/13 253/19 254/15 254/23 256/1 268/7 268/23 269/6 270/9 271/2 273/18 275/9 276/17 278/6 279/13 279/20 286/2 289/17 295/12 295/24 296/1 296/1 296/13 301/9 302/17 305/4 305/12 307/22 308/2 308/4 308/5	hip [3] 271/21 275/24 276/3	hope [3] 245/23 246/6 285/4
hearing [1] 181/1	hire [1] 224/8	hoping [1] 139/11
hearsay [13] 215/23 216/11 216/18 216/21 217/14 237/20 238/2 238/16 238/20 239/3 239/7 245/4 245/9	his [125] 137/8 138/14 138/14 139/12 140/14 140/18 144/12 144/13 144/21 147/7 147/18 149/12 150/16 153/10 153/11 153/11 153/12 153/25 154/25 156/17 160/5 175/4 175/5 181/13 181/15 183/12 183/21 183/25 185/2 185/2 186/9 200/17 200/17 200/20 208/20 209/2 209/20 216/21 216/22 220/5 220/7 225/23 226/6 226/12 226/19 227/10 227/18 227/23 233/12 235/6 235/20 239/3 244/23 244/24 261/10 266/6 269/1 269/12 271/15 271/18 271/19 271/20 271/21 271/22 272/5 272/12 272/12 272/17 273/4 273/9 273/13 273/13 273/24 274/14 275/24 275/24 276/3 277/4	host [1] 231/3
heart [2] 183/9 296/8		hot [1] 152/5
heat [1] 205/21		
heavy [2] 305/5 305/12		
height [4] 154/9 154/11 155/12 271/7		
held [10] 135/12 173/4 177/25 208/2 216/1 218/25 225/19 227/8 232/4 236/6		
hello [1] 144/7		
help [3] 159/11 165/25 203/17		
helped [1] 273/4		
helps [1] 301/4		
her [5] 144/8 147/15 175/1 175/3 176/4		
here [54] 137/14 144/7 159/2 161/7 161/8 161/9 161/16 165/5 174/19 181/6 185/5 196/18 209/23 217/5 218/5 219/14 221/3 223/13 228/10 228/24 235/25 236/10 236/11 236/17 237/3 237/10 238/11		

H	I	
hotline [2] 172/3 172/22	I just [1] 195/13	important [12] 169/16 170/9
hour [5] 169/7 246/13 247/24 266/3 287/9	I'd [3] 145/13 163/1 292/9	170/9 171/14 171/16 171/19
hours [3] 169/6 188/21 287/10	I'll [34] 141/2 142/2 142/3 142/10 142/13 143/3 144/9	235/22 249/19 277/25 283/10 302/2 306/1
house [2] 149/12 295/16	185/4 202/11 203/11 203/18	impose [1] 227/12
houses [1] 296/18	203/19 203/20 208/4 216/20	imposed [1] 228/15
how [62] 144/2 145/15 145/20 145/24 146/7 151/21 154/22	219/25 226/16 230/7 230/8	impression [1] 201/1
155/4 159/24 160/3 164/23	233/6 233/6 233/7 236/20	imprisonment [12] 141/1 235/4 259/17 259/23 260/6 260/8
169/16 173/19 173/21 173/22	236/21 236/23 237/15 244/6	260/14 261/7 264/7 264/14
179/6 180/8 191/7 194/16	245/1 247/24 249/1 249/1	265/12 268/16
195/12 197/2 197/24 198/13	249/3 255/20 308/3	improper [2] 248/10 251/15
198/20 199/14 202/7 204/13	I'm [99] 139/2 139/8 141/11	improperly [1] 235/16
206/12 206/18 207/23 208/13	141/12 141/15 141/19 141/20	in-training [1] 224/17
210/25 213/24 224/14 224/18	141/20 143/4 144/7 148/25	inaccuracy [2] 175/10 286/8
224/21 225/22 227/13 231/10	150/5 150/11 154/4 154/19	inaccurate [2] 140/20 141/14
242/24 245/17 246/1 246/5	158/9 159/10 161/2 167/22	incarceration [1] 141/14
258/4 264/4 264/21 265/3	173/7 173/15 174/21 179/23	incident [6] 146/18 148/21 168/8 170/21 175/24 282/12
265/4 265/10 273/10 281/17	180/15 181/10 181/16 181/17	incidents [3] 167/9 174/3 174/4
281/19 286/5 286/6 287/20	181/17 183/23 183/24 184/5	
289/19 297/17 299/13 299/21	189/16 192/18 202/14 202/16	inclined [1] 263/22
301/9 307/2 307/9	202/25 208/6 210/5 211/22	include [2] 198/21 214/18
however [3] 169/6 253/25 256/9	213/11 213/23 213/25 214/22	including [2] 246/13 286/3
human [3] 284/16 284/24 288/19	215/11 220/10 221/10 225/25	incorporated [1] 252/18
hundred [6] 155/5 174/21 200/2 207/18 226/2 289/20	226/4 226/8 226/16 226/19	increase [1] 152/14
HURSON [36] 135/20 137/13 139/15 200/12 209/4 212/20	230/3 231/12 232/18 232/20	incredibly [2] 295/4 301/11
212/24 215/5 215/14 217/25	232/22 232/25 233/10 233/11	indeed [1] 238/23
219/11 220/8 221/1 225/24	236/17 236/18 236/22 237/10	index [5] 179/11 179/11 179/14 201/19 223/11
226/23 227/10 228/23 229/2	239/25 242/9 243/23 244/11	indicate [6] 139/21 140/22 141/2 184/7 221/22 233/6
230/2 230/9 231/19 233/3	245/24 245/25 246/19 248/19	indicated [5] 144/15 228/13 263/16 274/10 276/8
236/10 237/14 237/15 238/9	248/19 249/4 250/18 250/21	indicating [1] 300/6
243/4 243/16 244/13 245/3	250/24 254/21 255/4 255/24	indication [4] 254/19 254/20 289/9 292/4
245/9 245/24 262/25 263/3 263/5 267/3	257/8 257/9 260/2 260/6	indicative [1] 293/3
Hurson's [1] 144/6	262/6 262/11 262/15 262/18	indicia [1] 271/23
Huter [102] 151/21 151/21 152/16 155/14 156/1 156/12	263/3 263/11 263/13 264/11	indictment [6] 248/11 259/1 259/3 259/5 259/10 259/14
157/3 157/21 158/3 158/17	269/6 270/4 272/11 281/16	individual [8] 176/16 201/7 203/4 209/2 217/7 270/21 270/23 271/12
160/7 161/15 161/18 161/19	281/17 286/9 299/15 299/25	indivduals [1] 284/15
162/22 162/22 167/17 167/24	I've [30] 136/12 138/3	indulgence [2] 195/1 231/16
191/24 192/1 192/21 192/24	145/19 164/2 164/2 165/9	infer [2] 276/20 276/20
193/5 193/11 193/15 238/12	173/21 181/19 191/9 198/1	inference [6] 242/20 251/19 284/1 284/4 286/17 292/24
238/12 240/10 268/9 270/18	198/2 198/9 198/15 199/8	inferences [12] 282/3 282/10 282/13 283/17 284/4 284/5
271/2 271/15 271/18 271/23	200/1 200/2 203/24 208/12	284/9 284/11 298/23 298/23 300/10 301/16
272/4 272/7 272/15 272/16	209/5 222/6 228/22 237/11	inferential [1] 284/7
273/3 273/5 273/7 273/9	248/7 251/17 253/16 261/12	influence [1] 243/11
273/15 273/16 273/22 274/16	261/23 280/9 297/9 300/6	information [12] 136/15 137/9 138/2 138/3 154/7 154/8
274/18 275/20 275/23 276/7	IAD [3] 136/7 138/14 178/3	176/18 205/9 218/18 238/19 288/16 298/13
277/3 277/23 278/16 279/13	idea [6] 140/17 152/5 159/19	informed [2] 268/13 269/11
280/4 280/12 281/18 282/2	184/17 232/20 287/24	initial [5] 205/25 206/2 206/16 229/11 245/18
282/6 286/18 288/25 289/3	identical [1] 183/10	initials [1] 211/2
289/4 289/7 289/14 291/3	identifiable [4] 290/7 290/21 291/1 303/4	ink [1] 201/23
291/8 291/9 291/15 292/2	identification [19] 167/23	innocence [2] 248/12 248/15
292/18 292/21 293/7 294/2	180/21 198/10 198/12 199/21	innocent [8] 242/16 254/2 256/11 283/3 284/18 284/23 286/10 300/20
294/7 295/1 295/18 295/18	204/1 205/17 214/23 215/10	inquiry [8] 182/23 183/1 183/24 184/5 185/4 228/22
296/4 296/15 296/19 300/8	215/12 216/15 216/24 239/25	
300/16 301/3 301/8 302/18	240/24 241/2 241/3 241/3	
302/24 303/4 303/11 303/18	298/13 298/16	
303/19 304/14 304/18 304/22	identifications [4] 199/5 200/5 200/9 202/7	
304/24 305/1 305/10 305/15	identified [2] 139/12 274/23	
305/17 305/19 307/15 307/17	identifiers [1] 308/12	
Huter's [6] 171/13 275/22 277/25 289/23 292/3 292/21	identify [1] 294/1	
	ignore [1] 275/22	
	illuminates [1] 162/20	
	immediately [2] 161/20 192/14	
	impact [1] 229/8	
	impeached [1] 183/18	
	implied [1] 287/17	
	implies [1] 209/3	
	imply [3] 140/21 141/17	

Case 1:09-cr-00560-RDB Document 60 Filed 08/03/10 Page 191 of 210

I	investigative [7] 219/4 250/6 250/9 250/23 251/1 251/3 251/12 involve [3] 139/19 183/5 189/17 involved [8] 139/16 144/16 144/17 146/22 208/7 209/22 209/24 255/21 involvement [1] 142/3 involves [2] 183/2 188/17 irrelevant [1] 182/22 is [570] isn't [22] 157/8 163/11 166/1 169/18 170/3 170/7 171/6 171/18 172/11 253/10 258/5 276/17 281/20 283/4 288/1 288/8 293/12 293/23 295/20 297/18 297/19 301/5 issue [22] 137/19 179/22 186/10 190/17 208/12 208/22 209/1 219/24 244/14 245/4 245/9 250/24 257/20 257/22 258/2 261/25 262/25 270/1 276/13 293/4 297/17 299/13 issued [1] 148/7 issues [9] 136/7 138/18 139/4 265/18 275/8 280/2 280/3 280/8 280/9 it [505] it as [1] 164/17 it's [162] 140/25 141/2 141/3 141/5 141/6 141/8 142/20 143/18 146/9 151/23 152/3 152/3 153/9 154/6 155/8 157/15 157/19 157/20 163/4 163/6 163/15 163/16 166/1 166/4 168/4 168/8 168/14 168/24 171/12 171/14 171/16 172/20 179/10 179/22 180/15 180/21 181/1 181/6 182/9 182/18 183/11 183/22 184/12 184/14 184/14 184/15 184/16 188/19 188/20 201/2 201/10 201/15 202/15 202/16 205/10 205/13 205/13 205/21 206/25 207/1 207/9 208/14 208/15 208/16 209/8 209/14 209/17 211/18 214/13 214/16 215/23 216/21 217/1 219/10 220/4 220/5 222/6 225/10 225/12 225/21 225/21 226/5 226/12 226/14 229/6 235/15 235/22 235/24 238/4 238/11 238/22 239/2 239/18 241/6 249/4 250/1 250/19 251/6 251/6 252/3 252/12 253/16 255/22 255/22 255/23 260/6 262/21 264/7 266/6 271/16 274/7 274/12 274/12 274/13 274/13 275/25 276/1 276/2 276/9 277/15 277/16 277/19 279/15 280/9 280/19 282/17 282/17 282/20 282/21 282/24 283/2 283/5 283/8 286/3 286/7 287/19 288/9 290/2 290/3 291/11 291/12 292/1 296/16 298/20 298/22 298/22 299/11 302/2 302/12 303/22 303/22 306/4 306/5 306/5 306/6 306/6 306/7 306/24 307/7 307/7 307/9 307/18	item [38] 199/10 199/11 199/12 199/20 201/2 201/13 201/15 201/18 204/6 204/15 204/16 204/18 204/25 205/1 205/1 205/8 206/2 206/3 206/14 206/14 206/15 206/16 206/20 206/23 206/23 207/5 207/21 210/13 210/23 211/3 211/7 211/17 218/10 222/15 223/3 229/7 229/16 229/17 items [12] 142/2 200/7 207/18 216/16 222/7 224/19 224/19 233/15 239/23 240/1 243/22 247/4 its [10] 201/8 201/9 260/11 268/14 269/21 269/24 270/5 277/7 280/14 280/25 itself [4] 191/23 212/5 238/25 293/23
J	jacket [4] 148/8 184/3 184/6 184/12 JACOB [1] 135/17 job [3] 167/19 243/22 283/22 JOHN [1] 135/17 joint [3] 261/24 262/1 262/9 JR [1] 135/17 judge [12] 180/25 200/17 266/5 276/18 277/11 277/13 281/10 284/2 284/21 285/4 292/11 308/5 Judge's [1] 308/9 judges [1] 250/3 judgment [2] 245/11 284/18 Judicial [1] 308/12 juicy [1] 273/5 Julie [2] 135/24 308/14 July [34] 135/12 145/13 152/9 153/20 154/23 154/23 168/12 168/13 168/13 170/25 190/10 234/6 235/3 250/14 250/15 259/15 268/4 268/24 269/19 270/2 270/16 270/19 275/5 282/12 284/9 286/2 286/16 294/9 299/5 299/14 299/14 299/17 302/3 302/4 July 6 [23] 145/13 152/9 153/20 234/6 235/3 250/14 259/15 268/4 268/24 270/2 270/16 270/19 275/5 282/12 284/9 286/2 286/16 294/9 299/5 299/14 299/17 302/3 302/4 July 6th [2] 168/13 269/19 July 6th of [1] 154/23 July 7 [2] 250/15 299/14 July 7th [1] 168/13 July 7th of [1] 170/25 July 9th [1] 154/23 jump [1] 269/4 junk [1] 163/6 juries [3] 283/2 283/10 284/15 Juror [3] 263/18 263/22 264/2 jurors [5] 143/10 247/2 263/21 267/20 283/19 jurors' [1] 248/9 jury [67] 135/11 136/3 138/24 138/25 139/12 139/18	

<div>J</div> <div>jury... [61] 139/22 140/7 140/9 140/22 142/4 142/22 143/6 143/9 143/13 145/15 180/24 184/25 194/17 196/18 198/4 199/6 199/17 200/24 202/6 206/17 211/9 232/17 232/19 233/7 233/19 236/9 236/19 236/22 236/24 237/12 241/22 242/10 242/18 242/23 242/24 244/7 245/14 246/19 246/23 247/1 248/4 248/9 249/6 250/2 251/7 252/15 254/11 259/1 260/1 263/10 263/16 263/19 264/20 267/13 268/2 276/18 277/9 277/12 277/17 284/6 308/9 jury's [1] 248/8 just [176] just troubled [1] 179/17 justice [1] 284/25 justify [1] 258/11 Justin [1] 257/14 juvenile [16] 148/20 148/24 149/1 149/2 149/3 149/17 149/20 176/1 176/2 176/4 176/6 176/17 176/25 177/1 177/2 198/21 juveniles [1] 177/5</div>	<div>219/21 220/18 224/24 225/15 226/24 229/22 240/1 253/7 255/2 255/14 257/25 258/9 272/23 272/23 275/20 277/25 283/16 290/1 290/7 292/16 294/16 296/1 299/1 knowing [2] 244/19 244/25 knowingly [2] 259/18 260/17 knowledge [6] 144/15 167/5 169/11 183/25 185/2 258/6 known [16] 201/21 201/22 202/4 202/7 203/2 203/11 203/16 203/20 203/23 203/25 213/2 213/6 213/13 214/1 214/17 272/18 knows [6] 181/23 253/22 255/1 287/12 305/7 305/9</div> <div>L</div> <div>lab [13] 163/14 163/23 163/25 164/1 200/4 219/3 225/1 225/2 225/3 225/11 279/16 306/18 306/19 lack [2] 136/25 258/6 ladies [27] 144/9 196/17 198/3 199/6 199/17 200/20 202/6 206/17 211/8 233/20 235/12 237/2 237/8 247/16 268/2 277/8 278/23 280/11 281/1 281/7 282/19 285/18 297/2 298/21 301/7 301/14 301/25 laid [1] 210/6 lamp [1] 288/7 lamps [3] 287/23 287/23 287/25 land [1] 307/17 landed [2] 305/4 305/12 language [6] 140/5 141/13 141/21 141/21 141/22 254/21 larceny [1] 199/8 largely [1] 226/1 Laronde [75] 136/6 136/21 136/22 137/1 137/20 138/13 138/17 142/5 142/15 143/21 145/2 145/5 145/12 170/15 173/15 181/19 185/9 186/25 190/6 191/3 195/4 196/12 217/12 238/12 238/13 268/7 270/19 271/2 271/6 271/9 271/16 272/10 273/3 273/21 273/24 274/3 274/10 276/6 278/10 278/10 279/2 279/13 280/5 280/13 282/5 285/13 285/19 286/18 288/11 289/6 289/10 290/6 290/8 290/10 290/14 290/16 291/16 293/8 294/8 296/4 297/7 297/18 297/24 300/8 301/3 302/18 303/11 303/18 304/2 304/18 305/18 305/22 306/8 306/11 309/3 Laronde's [5] 217/9 218/6 275/25 282/2 305/19 last [3] 198/11 302/3 302/5 late [1] 220/5 latent [42] 197/21 198/2 198/7 198/11 200/4 200/7 200/8 200/24 201/1 202/7 202/9 203/21 203/23 204/4 204/11 206/4 206/6 206/18</div>	<div>210/23 211/5 211/10 213/2 213/6 214/24 216/15 216/17 216/24 219/18 220/18 221/13 221/16 221/19 222/20 222/22 223/6 224/3 224/16 224/19 226/14 229/4 229/13 240/14 latents [1] 229/7 later [9] 139/10 142/23 143/4 143/16 181/8 186/6 186/7 274/23 276/24 laughing [4] 217/5 219/14 220/9 220/10 law [5] 242/25 247/25 258/20 281/10 308/5 lawsuit [16] 179/3 179/12 179/13 181/23 181/25 182/2 183/6 184/8 184/9 184/20 184/21 184/22 184/23 184/24 185/1 185/23 lawsuits [6] 178/5 178/11 178/14 181/11 182/6 182/7 lawyer [3] 233/21 233/22 276/16 lawyer's [3] 252/16 252/17 252/23 lawyers [5] 143/1 186/2 233/24 276/19 285/25 layer [2] 205/20 206/13 laying [1] 274/11 lead [1] 138/17 leading [1] 192/4 learned [2] 269/13 274/23 least [6] 177/20 227/20 231/11 235/22 291/22 298/3 leave [12] 164/24 197/1 204/4 204/6 204/20 205/6 211/13 212/4 233/10 285/11 286/13 297/23 leaves [1] 197/3 leaving [1] 205/25 led [4] 272/5 272/15 276/7 276/23 left [27] 153/11 181/13 181/15 181/18 189/7 199/20 201/2 201/15 204/8 204/11 204/16 205/21 205/25 206/2 206/14 206/16 206/24 212/9 212/12 212/15 229/7 229/12 229/19 295/1 305/7 305/8 306/4 left-hand [1] 212/12 legal [5] 141/22 189/12 189/13 280/19 280/22 leisurely [1] 267/2 length [1] 205/20 lengthy [1] 157/19 less [7] 156/8 264/19 273/25 273/25 297/7 297/14 305/23 let [19] 150/20 159/15 165/10 173/15 189/16 215/6 222/12 224/8 241/21 241/23 243/11 248/8 249/2 250/7 280/1 284/17 299/25 300/2 300/5 let's [11] 174/6 175/24 186/13 268/21 269/4 270/17 275/17 276/22 278/17 282/9 289/3 letter [6] 136/17 136/19 136/24 148/8 151/2 151/2 letting [1] 159/17</div>
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Case 1:09-cr-00560-RDB Document 60 Filed 05/03/10 Page 193 of 210

<div>L</div> <div>level [10] 202/14 203/3 203/8 203/13 203/14 213/1 213/25 214/10 214/10 214/13 level-three [1] 203/14 level-two [3] 203/3 203/8 203/13 LEWIS [20] 135/7 235/3 253/19 254/15 254/24 256/1 259/16 261/6 264/4 265/5 265/10 268/4 270/16 274/23 283/3 283/18 286/6 298/18 302/3 302/8 lie [1] 276/25 life [1] 196/19 lift [15] 200/9 201/20 202/8 205/8 205/8 222/22 222/24 223/1 223/2 223/11 223/15 223/18 224/10 298/15 298/19 lifted [3] 201/19 223/8 224/3 light [13] 239/11 250/14 251/7 271/17 273/1 276/2 276/8 288/1 288/9 289/12 291/10 291/13 304/20 lighting [2] 238/5 272/24 lights [21] 155/17 155/21 159/4 192/11 192/14 192/15 192/20 195/5 272/12 272/25 278/12 289/12 290/15 290/18 290/19 290/25 304/3 304/6 304/11 305/14 307/13 like [73] 145/13 148/17 149/13 150/3 150/15 150/18 150/20 152/16 154/9 161/6 161/23 162/10 162/19 163/15 163/24 165/7 165/7 166/4 166/5 167/7 170/2 170/6 171/4 173/21 174/14 174/18 175/18 176/11 180/1 181/8 184/4 186/1 186/6 186/6 186/15 187/21 188/25 190/12 196/2 202/1 205/4 206/19 212/5 219/12 227/4 246/12 255/18 257/6 271/8 271/12 273/8 273/12 275/1 275/10 279/18 283/3 283/11 283/20 285/19 285/21 289/13 290/3 296/25 297/8 298/5 299/13 301/5 303/24 304/24 304/25 305/11 306/10 307/15 likely [5] 227/5 229/6 275/18 284/9 307/5 limit [1] 252/4 limited [2] 183/13 185/4 limiting [1] 208/8 line [13] 172/20 174/23 183/18 183/24 184/11 219/21 226/8 228/22 228/23 281/18 281/23 293/15 301/7 lines [9] 144/12 152/15 156/2 177/8 212/7 269/20 289/5 289/7 296/24 linger [1] 227/25 listen [2] 143/13 147/18 listened [2] 282/14 282/15 listening [1] 158/22 lists [1] 216/16 lit [1] 272/16 literally [1] 179/2</div>	<div>little [21] 141/15 143/15 143/17 158/13 162/4 164/20 171/17 195/11 195/13 198/4 207/9 211/22 211/23 247/18 248/19 254/13 270/17 274/5 274/5 277/5 298/11 live [4] 166/2 201/25 269/3 291/21 lives [1] 283/7 load [1] 211/23 loaded [2] 268/5 268/8 local [1] 137/3 located [1] 297/3 location [2] 161/14 176/20 locations [1] 296/20 locked [2] 149/4 149/20 lofty [1] 283/6 logic [1] 284/7 logo [1] 211/20 Lombard [1] 135/14 long [13] 145/15 151/21 197/24 222/6 239/13 245/17 246/1 246/5 246/21 252/3 274/11 293/12 297/9 longer [2] 143/15 247/18 look [25] 158/16 163/2 193/11 200/8 202/11 202/14 202/16 202/25 203/8 203/11 203/20 216/19 223/22 231/5 248/13 277/15 279/9 284/6 288/1 288/21 295/7 295/7 296/11 296/25 299/5 looked [18] 155/10 155/11 173/21 180/21 181/7 195/21 223/12 271/8 271/12 294/9 294/10 294/10 298/5 303/23 304/24 304/24 305/11 306/10 looking [19] 152/19 153/17 153/22 154/9 154/12 154/22 155/11 210/5 213/14 213/25 214/6 218/5 246/12 262/18 263/19 263/19 274/24 290/2 297/14 lookout [3] 154/3 154/14 270/21 looks [3] 184/4 212/5 307/15 loop [1] 202/20 lose [4] 148/17 150/3 151/11 158/4 lost [4] 278/1 278/1 278/4 288/12 lot [42] 158/7 158/19 158/24 158/25 159/11 160/2 160/3 160/9 165/20 177/16 189/1 212/6 272/8 272/25 273/1 275/9 275/14 275/14 278/13 280/9 280/17 286/2 286/3 286/5 286/15 287/9 287/24 288/3 288/5 290/9 290/20 292/10 292/16 293/2 294/10 294/10 294/11 294/11 294/12 294/12 297/25 299/12 lots [1] 304/19 loud [1] 289/15 low [1] 226/9 lower [1] 288/3 lowered [1] 201/5 LUCAS [99] 135/7 140/11 142/24 144/18 144/23 153/5 153/14 156/11 156/17 158/3 160/21 161/15 161/17 164/24</div>	<div>166/10 181/6 191/23 192/1 192/2 192/7 193/5 193/7 193/23 194/11 195/5 235/3 235/16 241/24 243/1 251/17 253/19 254/15 254/24 256/1 259/16 261/6 264/4 265/5 265/10 268/4 270/16 274/23 281/21 281/23 282/4 282/5 282/6 283/3 283/13 283/19 284/23 286/6 286/22 288/23 289/2 289/3 291/5 291/6 292/19 292/19 292/20 292/25 293/3 293/7 293/14 294/3 294/17 295/17 295/22 298/2 298/17 298/18 299/2 299/5 300/1 300/3 302/4 302/6 302/8 302/15 302/16 302/22 302/25 303/1 303/7 303/7 303/8 303/12 303/19 303/19 304/2 304/9 304/22 305/8 305/13 306/12 307/11 307/16 307/24 Lucas' [1] 140/5 Lucas's [6] 291/6 291/10 292/12 295/2 295/3 296/2 lunch [9] 232/19 232/23 233/12 245/15 247/18 248/2 266/3 267/2 267/4 Luncheon [1] 267/10 lying [2] 276/21 300/4</div> <div>M</div> <div>ma'am [42] 151/20 154/2 154/21 155/3 155/7 155/15 155/25 156/24 158/8 162/1 163/9 164/6 164/22 165/1 165/22 166/9 166/16 166/25 167/12 167/18 167/21 167/25 168/6 169/12 169/17 170/1 170/20 172/5 172/13 174/5 174/10 175/15 176/8 176/22 177/6 185/10 187/2 187/10 189/19 190/1 190/7 190/19 machine [5] 143/14 201/25 201/25 202/1 287/2 made [46] 136/22 145/20 145/24 148/3 148/24 149/2 153/20 155/13 160/22 164/2 168/24 176/15 176/19 191/8 191/9 199/21 200/9 201/7 202/10 222/10 222/24 223/2 238/24 241/8 244/19 244/24 249/16 250/20 253/5 261/25 262/9 269/12 271/13 278/25 282/10 285/20 286/14 287/16 297/17 299/1 299/7 299/19 299/20 299/20 300/8 305/8 magazine [2] 164/14 207/20 magnetic [1] 231/1 magnifier [1] 222/24 major [1] 164/18 majority [2] 291/21 291/22 make [64] 141/13 143/4 152/22 163/2 166/2 167/20 170/10 171/11 172/10 173/25 183/1 186/16 198/14 199/25 201/9 202/7 202/9 202/11 202/23 203/18 203/21 204/1 205/12 207/4 211/10 222/11 222/18 223/12 225/10 227/22 227/22 228/4 233/11 239/25</div>
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M	159/3 159/5 159/6 161/20 165/10 171/9 173/15 179/10 179/16 181/6 181/18 185/18 185/19 186/7 186/16 187/20 189/1 189/5 189/15 189/16 193/18 194/17 203/17 207/4 207/18 208/4 208/6 215/6 218/9 221/12 222/12 222/16 231/12 241/21 241/23 243/11 248/8 249/2 250/2 250/7 255/6 257/14 272/3 272/3 278/12 280/1 292/8 303/2 303/9 303/9 304/21 mean [40] 140/10 143/14 147/16 156/9 157/4 157/15 159/4 162/17 163/16 163/20 164/17 166/1 168/23 170/8 170/11 170/11 171/4 176/11 177/18 179/15 179/16 180/21 181/16 181/23 183/12 183/14 183/18 188/14 189/15 199/18 208/11 214/3 216/12 219/21 220/16 248/22 257/10 264/23 292/13 293/16 meaning [4] 214/2 214/17 269/20 279/7 meaningful [1] 209/13 means [7] 167/19 172/21 172/22 187/5 210/4 223/2 232/25 meant [3] 214/5 218/12 274/10 medication [1] 243/12 medium [1] 271/5 meet [1] 268/13 Melendez [1] 239/6 Melendez-Diaz [1] 239/6 member [1] 191/6 members [1] 285/2 memorialized [1] 210/5 memory [1] 170/13 men [5] 186/10 283/3 290/1 290/12 299/3 mention [2] 143/24 262/12 mentioned [6] 144/13 181/1 181/20 207/7 262/16 290/16 merely [1] 216/15 message [1] 228/24 met [3] 186/2 234/7 280/14 metal [4] 207/7 207/11 208/16 212/7 metallic [1] 194/7 method [7] 172/2 227/24 230/3 230/25 231/6 231/7 231/7 methods [3] 225/15 226/25 231/3 microphone [2] 197/10 267/8 middle [1] 306/4 might [17] 153/21 155/2 163/18 205/14 230/20 260/5 264/19 285/14 285/21 288/14 291/6 291/7 291/24 294/16 296/16 304/4 306/17 mind [1] 159/13 minding [1] 292/5 mine [1] 266/19 minefield [1] 301/13 minute [15] 156/8 159/7 237/3 272/1 272/2 273/25 273/25 274/14 297/7 297/11 297/11	297/14 297/15 305/22 305/23 minutes [13] 232/21 232/21 237/9 237/9 237/10 245/19 245/21 245/22 245/25 246/7 246/9 267/23 300/17 mirrors [3] 140/6 205/5 275/14 misconduct [1] 137/1 misconstrue [2] 299/25 300/5 missed [1] 228/9 missing [2] 221/10 228/7 mistake [23] 147/17 148/5 168/20 168/24 169/8 169/13 171/2 171/10 191/19 250/15 285/8 286/10 286/17 299/7 299/8 299/11 299/19 299/20 301/4 302/12 302/14 307/7 307/9 mistaken [4] 180/15 304/4 304/5 304/5 mistakes [15] 191/17 250/20 284/15 284/17 284/24 285/11 285/12 285/20 286/13 286/14 287/16 299/1 299/20 300/14 300/21 mistook [1] 299/2 mistrial [1] 220/22 Mm [1] 178/6 Mm-hmm [1] 178/6 mobile [3] 225/1 225/2 225/11 Model [2] 234/6 259/18 Modern [2] 251/7 252/15 modifications [3] 249/6 255/18 255/20 modified [4] 254/9 257/13 257/16 262/24 modifying [1] 255/24 moisture [20] 201/9 201/10 201/11 201/17 204/13 204/15 204/17 204/18 204/25 205/1 205/20 206/13 229/19 229/20 229/21 230/12 230/13 230/16 230/20 231/5 moisture-based [1] 230/13 moment [7] 190/2 196/7 219/10 245/16 280/10 295/23 300/23 moment's [1] 287/12 moments [2] 273/21 280/5 Monell [1] 184/17 money [1] 148/1 month [1] 186/7 more [44] 140/9 140/11 140/24 141/1 141/9 141/12 141/23 141/24 143/3 152/23 159/19 159/22 161/16 170/7 171/17 176/17 177/16 184/12 188/19 203/7 203/19 227/5 232/9 245/19 245/20 247/24 259/13 260/5 260/5 260/7 264/6 264/13 265/12 268/6 268/16 268/25 271/7 286/2 287/10 294/11 294/11 294/12 294/12 299/6 moreover [2] 254/1 256/10 morning [17] 136/2 136/7 139/23 140/1 143/4 143/11 143/17 144/2 144/4 168/9 168/12 197/18 197/19 240/2 243/13 251/9 251/17
----------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>M</p> <p>most [9] 136/24 230/12 230/13 239/11 267/4 269/10 282/25 284/9 290/2</p> <p>motion [14] 156/5 218/22 236/10 237/15 238/2 238/14 239/17 245/4 245/11 294/24 295/3 295/4 295/6 295/23</p> <p>motions [1] 181/1</p> <p>mount [2] 229/23 230/2</p> <p>mouth [1] 280/21</p> <p>move [7] 175/24 209/23 215/21 220/21 230/8 241/9 307/1</p> <p>moved [1] 161/6</p> <p>moving [3] 162/13 208/18 294/20</p> <p>Mr [37] 137/13 144/6 145/11 157/18 190/22 191/2 192/1 192/6 195/3 197/17 198/13 200/23 206/11 207/22 210/11 212/24 215/5 215/14 217/25 220/8 221/1 225/24 226/23 228/23 229/2 230/2 230/9 231/19 234/14 243/16 245/18 291/10 292/19 303/7 303/7 303/11 305/8</p> <p>Mr. [168] 137/16 138/21 139/15 139/17 139/17 140/5 140/11 142/24 143/7 144/18 144/23 145/8 151/14 153/5 153/14 156/11 156/17 158/3 160/21 161/15 161/17 164/23 164/24 166/10 167/9 172/1 174/3 181/6 191/23 192/1 192/7 193/5 193/7 193/23 194/11 195/5 197/4 197/4 197/18 198/17 199/6 199/23 200/3 200/11 200/12 200/15 200/21 200/21 200/24 201/21 202/6 204/4 206/3 207/7 208/24 209/4 210/12 210/13 211/8 212/20 212/22 216/25 217/9 217/23 219/11 221/2 227/10 231/20 231/22 233/3 233/16 234/3 234/24 235/16 236/10 237/5 237/14 237/15 238/9 238/23 240/17 241/24 243/1 243/4 244/13 245/3 245/9 245/24 246/25 251/17 253/9 259/6 262/25 263/3 263/5 264/12 265/6 267/3 267/21 267/25 277/11 279/4 279/20 280/8 280/13 281/13 281/21 281/21 281/23 282/4 282/5 282/6 282/14 282/15 283/13 284/23 286/22 288/23 289/2 289/3 290/16 291/5 291/6 291/6 292/12 292/19 292/20 292/25 293/3 293/7 293/14 294/3 294/17 295/2 295/3 295/17 295/22 296/2 296/23 297/21 298/2 298/15 298/17 299/2 299/5 299/23 300/1 300/3 301/23 302/6 302/15 302/16 302/22 302/25 303/1 303/8 303/19 303/19 304/2 304/9 304/22 305/13 306/12 306/23 307/11 307/16 307/24 308/8</p>	<p>Mr. Dorr [26] 197/18 198/17 199/6 199/23 200/3 200/11 200/15 200/21 200/24 201/21 202/6 204/4 206/3 207/7 210/12 210/13 211/8 216/25 217/9 221/2 231/22 279/4 279/20 280/13 298/15 306/23</p> <p>Mr. Dorr's [1] 208/24</p> <p>Mr. Fuchs [25] 137/16 138/21 139/17 145/8 151/14 164/23 167/9 172/1 174/3 197/4 233/16 234/3 234/24 237/5 253/9 259/6 264/12 265/6 277/11 280/8 296/23 297/21 299/23 301/23 308/8</p> <p>Mr. Fuchs' [1] 282/15</p> <p>Mr. Hurson [20] 139/15 200/12 209/4 212/20 219/11 227/10 233/3 236/10 237/14 237/15 238/9 243/4 244/13 245/3 245/9 245/24 262/25 263/3 263/5 267/3</p> <p>Mr. Kerwin [1] 238/23</p> <p>Mr. Lucas [73] 140/11 142/24 144/18 144/23 153/5 153/14 156/11 156/17 158/3 160/21 161/15 161/17 164/24 166/10 181/6 191/23 192/1 192/7 193/5 193/7 193/23 194/11 195/5 235/16 241/24 243/1 251/17 281/21 281/23 282/4 282/5 282/6 283/13 284/23 286/22 288/23 289/2 289/3 291/5 291/6 292/19 292/20 292/25 293/3 293/7 293/14 294/3 294/17 295/17 295/22 298/2 298/17 299/2 299/5 300/1 300/3 302/6 302/15 302/16 302/22 302/25 303/1 303/8 303/19 303/19 304/2 304/9 304/22 305/13 306/12 307/11 307/16 307/24</p> <p>Mr. Lucas' [1] 140/5</p> <p>Mr. Lucas's [5] 291/6 292/12 295/2 295/3 296/2</p> <p>Mr. Sippel [9] 139/17 197/4 200/21 212/22 231/20 267/25 281/13 281/21 290/16</p> <p>Mr. Sippel's [1] 282/14</p> <p>Mr. Thompson [5] 143/7 217/23 240/17 246/25 267/21</p> <p>Ms [16] 144/2 144/24 151/15 151/18 154/18 171/22 173/14 185/8 186/24 188/7 189/24 190/5 234/21 247/8 263/4 304/16</p> <p>Ms. [45] 137/13 139/3 139/8 140/12 142/10 142/19 144/6 179/10 184/24 190/21 196/6 235/9 236/1 236/14 237/14 239/21 241/5 241/20 243/4 243/16 244/13 246/3 246/16 250/16 252/8 253/2 253/12 255/14 256/19 257/9 257/18 258/11 259/8 260/24 262/8 266/16 281/14 301/22 302/1 302/9 304/4 305/6 306/3 306/19 307/6</p> <p>Ms. Newberger [43] 137/13 139/3 139/8 140/12 142/10 142/19 179/10 184/24 190/21</p>	<p>196/6 235/9 236/1 236/14 237/14 239/21 241/5 241/20 243/4 243/16 244/13 246/3 246/16 250/16 252/8 253/2 253/12 255/14 256/19 257/9 257/18 258/11 259/8 260/24 262/8 266/16 281/14 301/22 302/9 304/4 305/6 306/3 306/19 307/6</p> <p>Ms. Newberger's [2] 144/6 302/1</p> <p>much [26] 145/1 145/4 150/24 155/4 176/10 180/1 184/12 188/10 188/19 188/25 196/11 204/13 204/17 214/18 232/1 238/9 248/3 271/6 279/4 281/13 281/17 284/20 287/10 298/13 299/13 306/16</p> <p>multiple [1] 184/10</p> <p>must [5] 247/19 260/10 261/3 268/13 304/18</p> <p>mustaches [2] 271/4 299/3</p> <p>my [82] 136/17 136/23 138/13 146/19 147/5 147/8 147/17 148/8 149/19 159/7 162/6 162/21 164/8 164/18 164/19 165/6 169/10 170/12 171/12 173/5 175/23 176/11 177/9 177/9 177/11 189/3 189/7 190/12 190/12 190/13 190/13 190/14 192/14 195/12 197/12 198/15 207/17 208/11 208/12 208/23 209/1 209/16 210/2 211/2 211/20 212/16 217/10 218/8 218/12 220/13 222/24 224/12 225/21 227/3 239/18 240/4 241/7 252/2 252/8 252/13 253/16 254/11 255/16 259/2 263/19 266/8 266/18 281/16 286/10 287/1 287/3 287/3 287/10 289/17 289/17 294/21 298/9 298/20 300/5 304/20 305/20 306/20</p> <p>myself [2] 147/5 152/16</p> <tr> <td data-bbox="185 1234 634 2001"></td><td data-bbox="634 1234 1084 2001"></td><td data-bbox="1084 1234 1533 2001"> <p>N</p> <p>name [9] 147/1 147/25 184/9 184/10 197/10 197/10 197/12 211/19 211/20</p> <p>narcotic [1] 243/12</p> <p>narcotics [2] 139/20 142/3</p> <p>narrative [1] 168/10</p> <p>nature [7] 146/4 179/20 184/8 184/21 211/17 233/23 306/24</p> <p>near [1] 288/7</p> <p>nearby [6] 193/23 194/12 194/14 305/7 306/6 306/12</p> <p>necessarily [7] 209/17 254/2 256/11 257/10 286/24 292/13 293/16</p> <p>necessary [2] 141/9 147/24</p> <p>need [23] 152/6 162/17 209/21 209/21 209/23 212/25 213/1 213/5 214/10 214/13 214/14 214/18 232/16 232/19 232/22 232/24 235/21 254/13 263/8 272/16 291/17 298/12 298/13</p> <p>needs [4] 213/8 248/7 265/1 287/18</p> </td></tr>			<p>N</p> <p>name [9] 147/1 147/25 184/9 184/10 197/10 197/10 197/12 211/19 211/20</p> <p>narcotic [1] 243/12</p> <p>narcotics [2] 139/20 142/3</p> <p>narrative [1] 168/10</p> <p>nature [7] 146/4 179/20 184/8 184/21 211/17 233/23 306/24</p> <p>near [1] 288/7</p> <p>nearby [6] 193/23 194/12 194/14 305/7 306/6 306/12</p> <p>necessarily [7] 209/17 254/2 256/11 257/10 286/24 292/13 293/16</p> <p>necessary [2] 141/9 147/24</p> <p>need [23] 152/6 162/17 209/21 209/21 209/23 212/25 213/1 213/5 214/10 214/13 214/14 214/18 232/16 232/19 232/22 232/24 235/21 254/13 263/8 272/16 291/17 298/12 298/13</p> <p>needs [4] 213/8 248/7 265/1 287/18</p>
		<p>N</p> <p>name [9] 147/1 147/25 184/9 184/10 197/10 197/10 197/12 211/19 211/20</p> <p>narcotic [1] 243/12</p> <p>narcotics [2] 139/20 142/3</p> <p>narrative [1] 168/10</p> <p>nature [7] 146/4 179/20 184/8 184/21 211/17 233/23 306/24</p> <p>near [1] 288/7</p> <p>nearby [6] 193/23 194/12 194/14 305/7 306/6 306/12</p> <p>necessarily [7] 209/17 254/2 256/11 257/10 286/24 292/13 293/16</p> <p>necessary [2] 141/9 147/24</p> <p>need [23] 152/6 162/17 209/21 209/21 209/23 212/25 213/1 213/5 214/10 214/13 214/14 214/18 232/16 232/19 232/22 232/24 235/21 254/13 263/8 272/16 291/17 298/12 298/13</p> <p>needs [4] 213/8 248/7 265/1 287/18</p>			

N	note whatever [1] 249/1	Number 25 [2] 259/2 260/4
negate [1] 280/3	noted [12] 136/23 138/1	Number 27 [1] 263/12
Negative [2] 221/17 221/20	239/7 239/7 250/4 251/4	Number 28 [1] 262/18
neglect [2] 137/4 174/7	251/5 251/11 252/12 258/9	Number 5 [2] 249/7 249/14
neighborhood [5] 291/21 292/3	258/12 308/12	Number 8 [2] 249/25 250/4
296/15 296/16 297/5	notes [3] 237/16 238/21	Number 9 [1] 241/7
neighborhoods [3] 291/19	263/20	O
291/20 291/24	nothing [14] 144/20 150/2	oath [5] 145/3 179/25 270/18
never [17] 138/14 149/21	162/25 166/17 166/21 186/8	276/18 289/21
164/2 173/21 185/25 186/1	216/13 221/23 224/1 243/24	object [15] 204/21 205/22
192/16 224/3 224/6 242/15	261/17 274/8 289/13 292/3	206/21 215/17 273/17 282/7
242/16 278/1 278/1 278/4	notice [8] 195/19 195/21	283/16 283/21 289/1 291/11
282/5 292/22 292/22	195/22 201/3 202/13 212/6	294/3 294/25 295/24 304/24
new [1] 201/25	287/6 287/12	305/12
NEWBERGER [59] 135/19 137/13	noticeable [1] 290/3	objected [2] 248/24 253/17
139/3 139/8 140/12 142/10	noticed [1] 153/4	objection [60] 171/20 173/2
142/19 144/24 151/15 151/18	noticing [1] 262/11	173/5 173/10 177/23 186/22
154/18 171/22 173/14 179/10	notified [1] 270/23	188/5 189/22 192/3 206/8
184/24 185/8 186/24 188/7	notify [2] 173/22 173/23	207/15 207/25 208/12 208/23
189/24 190/5 190/21 196/6	noting [3] 241/7 242/18	209/16 209/20 215/23 216/20
234/21 235/9 236/1 236/14	297/6	217/15 225/17 225/20 227/6
237/14 239/21 241/5 241/20	now [91] 137/14 144/10	229/25 239/7 241/14 248/16
243/4 243/16 244/13 246/3	153/13 154/1 155/9 155/13	248/18 249/2 249/22 249/24
246/16 247/8 250/16 252/8	156/5 160/21 161/24 162/11	250/3 251/4 251/5 251/10
253/2 253/12 255/14 256/19	163/8 163/10 163/13 166/7	252/2 253/2 253/8 253/11
257/9 257/18 258/11 259/8	167/9 168/7 172/25 177/20	255/12 255/15 255/17 256/15
260/24 262/8 263/4 266/16	187/3 187/14 188/24 189/15	256/18 257/3 257/7 258/9
281/14 301/22 302/9 304/4	201/10 203/8 208/18 209/23	258/12 258/13 258/15 258/21
304/16 305/6 306/3 306/19	210/4 212/25 214/9 214/20	259/6 260/24 261/18 262/3
307/6	216/14 218/1 218/4 218/4	263/12 263/23 264/8 264/15
Newberger's [2] 144/6 302/1	221/19 222/4 224/14 225/14	265/14 266/21
news [1] 280/20	226/24 228/10 229/16 230/10	objectionable [1] 228/20
newspaper [1] 280/21	233/20 235/12 237/5 237/7	objections [7] 248/14 249/3
next [5] 149/14 197/4 219/23	237/8 237/13 239/18 239/23	249/5 251/20 252/5 260/21
233/15 233/15	245/13 246/20 246/23 247/4	266/17
nexus [5] 237/22 238/15	247/6 250/8 251/13 251/13	objects [1] 194/7
245/6 245/10 269/5	252/13 253/6 253/14 253/21	obligation [1] 242/11
nice [8] 144/2 144/4 205/4	254/17 254/22 267/6 267/23	obligations [1] 248/10
205/5 205/6 205/15 214/13	270/4 270/9 270/17 272/21	obscured [1] 296/20
267/1	274/2 274/9 276/5 277/16	obscurer [1] 290/5
night [15] 161/12 169/7	278/24 279/11 281/25 282/14	observation [3] 286/17 287/6
187/11 286/7 287/14 288/18	283/8 285/13 286/15 289/14	300/8
289/24 294/11 298/6 299/2	289/16 290/6 291/5 293/4	observations [3] 278/8 282/2
299/19 301/3 301/17 302/19	294/24 296/14 297/17 303/3	282/9
305/3	304/3	observe [1] 293/13
nighttime [1] 291/11	nowhere [2] 161/1 161/12	observed [5] 216/17 221/13
nine [2] 198/2 200/1	number [43] 137/22 146/9	238/13 268/9 273/17
nitpick [1] 175/22	158/10 182/13 182/18 184/12	Observed/Developed [1] 221/13
no [208]	210/17 211/3 213/8 218/9	obstacle [2] 294/6 294/7
nodding [5] 162/14 182/1	218/9 234/7 240/9 241/7	obtaining [1] 211/5
232/10 233/2 255/14	249/5 249/7 249/11 249/14	obviously [5] 178/20 220/1
noise [2] 143/14 290/17	249/23 249/25 250/1 250/4	232/22 257/21 266/2
non [1] 279/15	250/5 250/5 250/12 250/21	occur [1] 172/17
non-homicide [1] 279/15	251/1 251/13 251/25 252/9	occurred [7] 168/8 168/16
None [2] 189/8 252/7	252/9 252/13 253/6 253/15	170/14 170/24 250/19 255/23
nonporous [4] 206/20 207/8	253/16 259/2 259/19 260/4	261/9
207/8 208/17	262/18 263/12 263/18 263/22	off [33] 137/3 141/15 150/11
normal [1] 200/19	264/3	150/12 156/12 157/5 158/20
normally [11] 152/15 163/23	Number 09AG00251N [1] 210/17	187/3 192/7 192/16 201/19
163/25 196/2 201/13 201/16	Number 1 [3] 263/18 263/22	204/2 204/22 205/8 205/22
205/4 206/20 206/25 207/19	264/3	207/5 207/13 207/20 207/24
212/15	Number 11 [3] 240/9 250/12	211/5 211/11 211/25 222/14
NORTHERN [1] 135/2	251/1	222/22 223/8 267/19 271/11
Nos [1] 217/21	Number 12 [1] 250/5	272/5 272/20 276/7 281/16
not [308]	Number 14 [1] 252/13	287/25 304/3
not-so-strong [1] 270/8	Number 18 [1] 252/9	off-duty [1] 137/3
notably [1] 269/10	Number 19 [1] 252/9	offense [14] 141/3 141/5
note [9] 140/25 217/1 239/9	Number 2 [1] 158/10	141/8 235/15 235/24 237/19
249/1 250/7 252/2 257/9	Number 20 [1] 253/6	245/10 255/10 256/4 256/25
266/5 271/1	Number 21 [1] 253/16	257/10 260/1 260/9 299/5
	Number 23 [1] 253/15	

Case 1:05-cr-00560-RDB Document 60 Filed 08/03/10 Page 197 of 210		
O	201/7 202/20 202/23 203/9 207/18 208/3 211/16 213/21 213/24 213/25 214/10 215/11 221/2 221/10 221/11 226/2 226/2 226/6 230/22 233/21 233/24 235/5 237/19 248/6 248/7 259/5 259/5 259/10 259/13 259/17 259/24 260/6 260/7 260/14 261/8 262/8 263/21 263/21 264/6 264/13 265/12 267/3 268/6 268/16 268/25 276/24 280/1 285/5 285/22 286/25 287/16 288/10 292/24 293/25 295/11 295/15 297/6 297/15 297/21 299/8 303/20 303/21 304/9 307/10 one's [1] 293/5 one-count [2] 259/5 259/10 ones [4] 282/13 284/11 299/22 300/11 only [34] 137/17 141/8 141/9 164/2 165/9 167/23 173/5 196/21 205/8 212/11 212/14 218/15 220/13 229/10 231/6 231/6 233/21 235/14 235/19 238/1 240/25 241/2 241/3 241/4 257/20 259/5 261/16 265/23 279/1 281/8 288/19 301/18 305/16 308/3 open [10] 136/1 148/24 272/19 285/11 286/13 296/18 306/1 306/2 306/5 306/7 open-air [3] 148/24 272/19 296/18 opening [5] 233/22 268/12 270/5 276/14 282/15 opens [1] 305/8 operating [2] 288/20 299/9 operations [3] 151/25 152/3 152/18 opine [4] 226/11 226/12 228/16 228/16 opined [1] 269/18 opinion [9] 144/12 200/17 200/17 200/20 210/3 227/18 238/22 239/14 239/16 opportunity [4] 157/4 198/14 243/4 293/13 opposed [1] 220/19 opposite [1] 202/24 or alongside [1] 272/11 orange [1] 236/11 order [2] 213/9 214/9 originally [3] 152/12 158/18 250/10 other [44] 137/22 138/11 139/25 142/15 165/2 165/9 166/21 179/9 179/9 185/19 186/7 189/3 192/24 193/2 193/21 194/7 194/9 201/11 209/2 209/14 222/7 223/21 224/16 224/19 231/3 238/10 242/8 242/12 253/25 255/11 256/5 270/7 270/14 285/6 287/12 288/10 290/1 291/2 293/15 295/4 297/6 299/12 299/22 302/18 other's [1] 290/2 otherwise [5] 140/21 183/14 196/23 272/23 288/17 our [23] 141/7 149/12 168/21	182/21 194/24 224/9 241/7 242/11 249/24 257/7 277/10 280/22 280/22 280/23 281/10 284/23 284/25 285/3 286/24 287/6 287/6 300/15 300/16 out [95] 143/12 143/19 146/19 147/14 147/18 148/15 149/11 150/1 150/14 150/23 151/7 155/14 156/2 156/14 156/20 157/11 158/13 158/14 158/22 159/14 160/9 160/15 160/17 160/19 162/15 164/13 175/1 175/2 178/22 179/14 179/18 182/19 185/16 189/2 189/7 190/16 191/24 202/21 202/23 204/24 205/21 206/5 206/5 207/18 208/5 211/24 220/2 224/22 225/3 225/11 232/16 232/25 236/11 236/13 236/22 248/4 250/22 254/21 255/4 261/24 262/8 265/9 270/22 270/22 271/15 271/18 274/21 275/23 276/13 277/4 277/15 278/6 279/17 285/19 287/2 287/3 289/4 289/12 291/4 291/25 292/22 293/10 296/6 296/25 297/11 298/2 299/8 302/25 303/8 305/15 306/1 306/2 306/5 306/7 307/1 outcome [3] 179/23 182/21 253/7 outline [2] 201/12 223/6 outside [5] 146/22 196/25 199/24 201/11 225/21 over [43] 140/15 140/16 142/14 142/21 142/24 143/3 145/17 145/22 150/12 151/23 159/11 161/16 161/21 164/19 180/3 181/11 182/19 185/19 186/6 195/15 198/14 198/15 205/24 224/14 228/23 230/13 236/20 240/1 241/14 243/8 245/14 248/8 251/17 268/21 268/21 271/22 273/23 278/16 278/17 297/13 302/23 305/19 305/20 overgrown [3] 160/24 161/8 295/13 overlap [1] 229/11 overruled [7] 188/6 192/5 206/9 207/16 209/21 226/20 239/8 oversight [2] 171/12 175/23 overwhelming [1] 281/5 own [10] 201/8 201/9 220/18 224/9 252/2 278/8 278/8 278/9 278/20 292/5
offer [1] 181/17 offered [4] 216/25 238/1 281/25 296/19 offers [1] 200/10 office [4] 207/14 218/8 223/22 224/20 officer [219] officers [53] 159/19 159/22 163/11 165/2 165/20 166/1 166/2 169/18 170/2 192/25 193/2 193/17 193/21 224/14 224/17 224/21 225/7 226/12 257/23 258/1 258/5 258/6 258/8 272/18 272/23 274/3 274/23 276/17 276/22 276/25 277/22 279/13 282/10 283/15 284/17 286/1 286/4 286/12 287/20 288/10 288/24 289/10 291/16 297/25 298/1 298/2 298/24 301/16 302/10 303/11 304/9 304/18 307/8 official [3] 135/25 197/20 308/15 often [3] 170/2 199/14 207/23 oftentimes [1] 170/6 oh [5] 209/5 221/10 277/2 279/11 297/13 oil [1] 201/11 okay [90] 146/10 147/12 148/19 149/14 149/22 149/24 151/4 152/5 152/19 152/23 153/9 154/1 154/8 154/11 155/6 158/3 158/14 158/24 159/19 161/10 161/14 161/25 162/8 163/13 164/21 166/3 166/15 169/1 169/4 171/14 172/1 173/23 174/3 174/16 175/16 176/20 177/4 177/17 185/13 185/20 186/10 186/18 187/22 188/11 188/22 189/6 189/11 189/20 190/15 190/17 191/10 191/19 192/13 192/21 193/10 193/14 193/19 193/23 194/18 194/22 194/25 195/19 210/1 210/9 211/4 212/18 214/5 218/15 220/3 221/2 225/14 227/21 228/11 228/17 228/25 230/12 237/17 246/8 246/19 248/21 252/11 253/14 255/20 257/16 262/22 264/25 265/18 266/10 267/13 288/21 old [2] 154/22 299/4 omission [2] 219/13 219/15 once [16] 142/14 146/24 157/15 158/21 185/18 186/6 190/16 192/14 193/16 193/16 202/10 203/10 203/24 244/18 290/15 305/17 one [102] 138/11 139/6 139/25 140/4 140/6 140/8 140/14 140/19 140/24 141/2 142/15 143/25 144/6 147/5 147/6 150/13 153/4 156/8 163/13 174/6 174/7 174/7 174/12 177/19 179/9 179/9 180/1 180/3 182/2 182/5 184/1 184/14 185/18 186/13 186/14 189/18 196/7 196/18	p p.m [5] 168/21 169/3 169/4 270/20 287/22 page [2] 168/1 218/5 paint [1] 201/12 palm [5] 201/4 202/2 202/15 222/17 279/7 panel [1] 263/19 pants [22] 147/7 147/15 147/18 175/1 175/2 175/4 175/5 175/21 204/24 293/5 293/16 293/17 293/19 293/22	

P	179/6 188/17 244/15 254/2 256/11 285/1 285/3 286/5 291/21 292/15 295/15 296/20 300/14 300/21 300/25 303/17 percent [5] 174/21 199/15 200/2 230/13 289/20 perception [2] 286/17 299/8 perceptions [1] 278/9 perfect [1] 280/20 performance [1] 243/15 perhaps [4] 159/21 217/2 220/17 262/24 period [5] 254/24 255/10 256/4 297/12 297/16 permissible [1] 138/17 Permission [1] 145/7 permit [4] 141/16 183/24 184/5 185/4 permitted [8] 136/13 136/14 138/2 184/21 196/23 200/17 228/14 231/22 person [29] 147/1 147/22 153/14 153/17 154/8 154/12 154/22 159/16 162/7 163/17 163/18 166/12 167/16 184/1 185/22 201/15 204/4 204/5 205/24 224/9 229/11 235/16 257/9 259/22 271/3 271/8 271/12 273/8 302/24 person's [1] 204/14 personal [2] 207/17 308/12 pertinent [1] 259/21 phone [2] 287/3 287/4 photograph [12] 154/1 165/11 180/15 181/3 223/24 240/10 241/11 270/25 271/1 271/3 271/13 298/4 photographs [4] 240/6 274/4 294/8 295/7 phrased [1] 208/10 physical [5] 180/23 188/24 189/17 214/24 216/15 pick [3] 163/8 194/18 264/2 picked [13] 164/4 164/4 194/11 194/19 195/9 195/9 195/11 195/19 279/3 279/3 287/1 306/8 306/14 picking [1] 182/18 picks [1] 227/3 picture [9] 154/6 155/10 155/11 158/19 161/5 180/14 270/24 271/7 302/21 pictures [1] 304/16 piece [7] 174/24 201/18 205/11 220/15 221/2 227/4 228/18 pieces [1] 203/7 pillar [1] 283/5 pistol [6] 145/13 302/5 304/24 305/11 306/16 307/17 pitch [2] 272/22 280/4 pitched [1] 277/2 place [10] 163/2 201/14 206/20 286/16 288/6 290/3 295/10 295/13 296/22 302/15 placed [4] 146/24 201/18 229/16 274/22 places [1] 213/13 placing [2] 201/23 229/17 plain [2] 275/24 289/13 plain-clothed [1] 289/13	plainly [1] 220/4 Plaintiff [1] 135/5 plaintiff's [1] 182/10 plan [2] 137/20 209/11 plastic [1] 205/5 plausible [2] 282/23 288/1 play [1] 283/10 please [10] 145/2 177/24 199/17 215/25 227/7 236/5 241/24 299/25 299/25 300/2 plural [1] 249/17 pocket [2] 206/4 206/5 pockets [1] 204/23 podium [1] 267/7 point [53] 137/11 138/23 138/25 141/8 153/4 156/20 157/2 158/14 158/17 159/14 159/15 160/5 160/6 160/21 160/24 163/10 163/17 165/2 165/15 183/4 192/11 192/21 193/10 210/2 213/5 213/17 232/17 238/1 241/17 245/9 263/5 265/18 265/21 266/10 266/13 267/16 269/16 271/17 274/22 274/25 285/19 286/11 290/14 292/18 292/20 293/25 297/24 299/18 303/1 304/8 305/14 306/1 308/3 pointed [1] 294/22 pointing [3] 291/5 291/5 291/10 points [7] 196/5 203/22 213/8 213/11 213/12 213/21 288/22 police [96] 137/8 145/14 145/16 146/7 146/10 146/15 148/5 148/19 150/25 151/19 159/6 159/9 160/3 169/15 169/18 170/2 170/3 171/3 172/22 174/8 174/11 184/1 184/15 187/7 187/8 189/11 190/18 191/7 192/25 193/2 193/17 197/23 197/25 219/5 219/9 226/12 227/13 227/19 227/20 228/14 230/1 234/11 238/20 257/12 257/22 258/1 258/5 258/6 258/8 271/24 272/14 274/23 275/20 276/6 276/10 277/21 279/12 282/10 283/15 284/17 284/19 285/12 285/22 285/25 286/3 286/12 287/9 287/19 288/10 289/10 290/7 290/11 290/13 290/21 291/16 291/23 292/1 292/8 292/9 292/17 293/1 295/9 295/14 298/23 299/14 300/2 300/4 300/12 300/15 300/15 300/16 301/16 302/10 303/4 304/9 307/11 policy [2] 279/12 308/12 poor [3] 211/13 211/25 212/4 porch [3] 153/7 153/8 153/9 pores [3] 201/8 203/16 203/16 porous [2] 206/19 208/16 portion [4] 222/20 222/22 224/18 291/23 portions [1] 294/22 position [3] 137/25 182/21 240/20 positive [2] 174/22 298/12
----------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

P	245/12 248/25 249/4 264/5 264/10	profanity [4] 137/2 188/9 188/22 189/9
possess [3] 259/18 259/24 259/24	primary [1] 225/12	proffer [1] 219/23
possessed [5] 260/17 261/10 270/2 270/16 275/4	print [67] 197/21 198/2 198/7 198/11 199/19 200/4 200/8 200/24 201/1 201/15 201/19 201/21 201/22 202/4 202/9 202/11 203/9 203/11 203/20 203/21 203/23 204/11 205/7 205/8 205/22 205/24 205/25 206/2 206/16 207/5 207/19 211/21 211/25 212/4 212/8 212/10 212/15 213/2 213/2 213/13 214/1 214/1 214/16 214/17 214/17 214/24 216/15 216/17 216/24 217/9 219/18 220/18 222/20 222/22 222/25 223/6 224/3 226/14 229/5 236/22 240/15 279/5 279/7 298/11 298/12 306/18 306/19	proffering [1] 240/3
possessing [1] 275/2		proficiency [3] 199/23 199/24 200/1
possession [17] 194/24 235/17 238/6 257/11 259/11 260/19 261/23 261/25 262/1 262/9 262/18 262/19 264/5 265/11 268/5 268/17 279/14		profoundly [1] 283/10
possibility [5] 285/12 286/13 289/23 291/14 298/14		program [1] 198/7
possible [11] 140/8 141/9 141/12 141/23 159/16 164/20 180/2 195/12 203/14 222/16 301/17		prohibited [1] 275/2
possibly [3] 152/12 212/13 221/9		projectile [2] 234/9 234/11
post [2] 166/3 226/7		promise [1] 300/20
post-transfer [1] 226/7		prone [1] 298/22
posture [2] 137/10 137/14		proof [7] 238/16 248/12 254/4 256/13 260/12 268/14 283/1
pounding [2] 162/2 296/8		proofread [1] 167/19
pounds [2] 155/5 299/6		properly [1] 146/14
powder [7] 201/16 201/17 205/7 206/20 231/1 231/1 231/8	printer's [1] 201/23	property [2] 211/3 218/9
powers [1] 287/6	prints [43] 164/9 167/8 195/16 200/7 202/7 203/16 203/17 204/4 204/8 205/6 206/4 206/6 206/18 210/24 211/5 211/6 211/10 211/14 213/20 213/21 213/24 214/3 214/6 214/9 221/13 221/16 221/19 222/2 224/11 224/19 226/1 227/5 229/11 229/11 229/23 230/12 231/14 297/19 298/9 306/21 306/22 307/2 307/2	proposed [4] 246/22 249/6 262/13 263/11
practice [2] 184/17 213/19		proposition [1] 284/14
pre [1] 204/12		prosecuted [3] 180/9 183/20 186/21
pre-transfer [1] 204/12		prosecution [2] 242/14 282/22
predicate [4] 235/15 235/20 235/24 235/24		prosecution's [1] 242/13
prejudice [1] 219/16	prior [23] 140/5 140/8 140/10 140/17 140/23 140/25 141/3 141/4 141/6 142/6 208/13 222/7 235/3 235/18 242/6 261/2 261/9 261/14 262/16 268/15 268/24 269/21 269/24	prosecutors [1] 169/23
prejudicial [1] 219/22		protected [1] 241/13
premise [1] 300/14		protection [2] 284/25 285/8
prepared [1] 270/11		protections [1] 177/5
presence [3] 143/13 222/8 232/16		prove [10] 238/5 242/13 242/16 253/23 255/9 256/3 260/10 261/3 280/15 280/24
present [13] 143/9 143/10 152/22 152/22 207/3 222/15 242/12 247/1 247/2 254/1 256/10 267/20 282/22	prison [4] 140/17 141/17 268/6 269/1	proved [7] 237/19 253/21 254/25 255/5 255/8 256/2 268/3
presented [9] 269/3 270/5 275/1 280/12 281/2 281/4 281/8 281/9 291/15	Privacy [1] 308/12	proven [4] 237/25 252/21 275/3 302/7
presenting [2] 276/14 276/15	probable [6] 146/14 191/4 191/10 191/12 191/14 282/25 151/23 160/1 160/2 168/14 171/2 182/22 189/16 194/17 219/18 220/5 226/18 241/6 259/4 275/19 285/24 289/22 290/6 290/23 290/24 290/25 292/9 299/19 304/4	proves [1] 281/5
preserve [8] 224/1 225/16 226/18 227/5 229/23 248/25 266/20 298/19		provide [1] 281/10
preserved [4] 241/19 245/8 245/11 266/21		provided [4] 136/16 137/8 137/21 138/3
preserving [1] 226/25		provides [2] 259/21 280/23
President [1] 284/21	problem [3] 141/20 171/11 207/9	publicly [3] 137/2 187/14 187/17
pressure [1] 204/18	problems [1] 167/10	publish [1] 215/18
presume [1] 232/25	procedural [2] 137/10 137/14	pull [9] 158/11 180/3 204/23 207/4 211/24 218/10 274/21 278/5 293/19
presumes [1] 257/24	proceed [4] 145/7 226/10 267/13 267/24	pulled [10] 155/22 206/5 206/5 250/8 250/22 277/4 290/8 290/20 292/22 302/23
presumption [4] 248/12 248/15 254/5 256/22	proceedings [2] 136/1 308/11	pulling [4] 182/19 293/4 303/13 303/22
pretrial [1] 265/24	process [14] 144/13 196/18 200/3 201/14 204/3 207/18 210/23 211/25 219/25 224/19 229/17 279/8 285/6 301/5	pulls [1] 293/15
pretty [18] 140/1 150/23 155/8 157/17 188/10 209/14 285/24 289/15 290/6 290/11 291/20 292/9 294/15 294/21 296/21 297/11 297/16 304/8	processed [6] 147/2 166/14 221/16 221/19 222/6 279/21	pumping [3] 273/9 273/9 303/20
preview [1] 250/18	processing [2] 200/7 200/9	punch [1] 189/8
previous [2] 178/23 209/5	produce [3] 220/15 224/8 239/20	punishable [12] 235/4 259/13 259/17 259/23 260/13 261/7 264/6 264/13 265/12 268/6 268/16 268/25
previously [15] 140/16 145/6 154/19 158/9 161/2 167/22 170/15 183/17 214/22 239/7	produced [2] 219/4 239/24	punishment [6] 141/1 141/9 141/12 149/18 263/8 263/9
	producing [1] 220/17	purpose [3] 263/12 263/13 270/22
		purposes [2] 167/23 210/2
		pursuant [1] 308/12
		pursue [2] 138/3 138/8
		pursued [1] 276/6
		pursuit [2] 268/7 272/6
		push [2] 211/23 228/10

P	<p>pushed [1] 228/10</p> <p>put [34] 147/1 148/2 148/8 149/6 159/14 164/18 166/13 192/11 192/14 193/7 195/4 195/14 195/15 201/19 204/18 205/7 217/17 253/5 265/9 276/8 279/21 287/1 287/2 290/15 294/5 297/4 302/8 303/5 304/3 304/6 306/12 306/13 306/25 307/24</p> <p>puts [1] 278/12</p> <p>putting [2] 161/18 161/19</p>	<p>reaching [1] 303/12</p> <p>react [1] 227/13</p> <p>reaction [1] 272/3</p> <p>read [10] 140/1 147/17 148/2 174/20 174/20 175/12 175/16 175/18 233/19 255/25</p> <p>reading [3] 141/20 141/20 262/6</p> <p>reads [2] 253/18 259/14</p> <p>ready [12] 143/20 241/21 246/23 247/17 247/18 260/9 266/25 267/13 267/16 267/22 267/24 287/11</p> <p>real [5] 195/4 196/19 288/22 289/23 291/14</p> <p>realize [1] 159/9</p> <p>realized [3] 160/6 287/3 292/25</p> <p>realizing [1] 158/18</p> <p>really [38] 143/18 149/6 150/17 156/9 157/17 157/20 159/5 159/13 161/1 162/8 162/15 163/1 163/15 163/16 170/12 177/9 183/13 208/5 208/5 213/20 250/12 250/13 250/24 255/2 259/4 263/10 265/1 268/11 273/5 279/1 288/1 291/11 295/17 296/12 296/12 297/8 300/25 302/9</p> <p>reason [15] 140/22 176/15 183/11 235/14 254/20 257/8 262/17 263/17 276/1 276/1 284/15 285/9 285/18 292/16 293/2</p> <p>reasonable [14] 239/13 242/14 260/11 261/4 275/4 280/15 280/25 281/6 283/1 284/10 292/24 300/10 301/17 302/7</p> <p>reasons [6] 181/6 226/5 239/9 239/17 245/12 299/10</p> <p>rebut [2] 300/1 300/12</p> <p>rebuttal [5] 246/10 246/13 247/12 247/15 247/23</p> <p>recall [6] 154/11 211/4 226/6 286/1 289/19 289/19</p> <p>receive [3] 140/12 141/13 150/6</p> <p>received [8] 140/11 146/2 179/1 209/7 209/12 217/21 234/23 235/11</p> <p>recently [1] 152/10</p> <p>recertified [1] 198/11</p> <p>recess [2] 267/9 267/10</p> <p>recognition [1] 284/16</p> <p>recognize [9] 161/3 167/24 181/16 209/16 210/13 284/19 285/10 289/16 290/10</p> <p>recognizes [1] 284/24</p> <p>recognizing [3] 285/9 285/9 288/19</p> <p>recollection [5] 138/14 154/14 154/20 168/16 241/7</p> <p>record [19] 140/2 140/5 140/18 182/8 197/11 220/8 240/4 241/13 241/19 242/6 245/3 248/23 248/25 252/11 252/21 257/19 266/20 267/19 308/11</p> <p>records [2] 238/18 240/16</p> <p>recover [7] 194/19 199/11 199/11 206/4 207/23 224/18</p>	<p>recover an [1] 199/11</p> <p>recovered [20] 147/7 147/9 147/16 147/25 148/1 148/1 166/8 175/4 175/20 208/15 210/16 211/6 213/2 214/17 227/1 229/3 231/9 268/8 269/19 307/4</p> <p>recovering [3] 206/18 207/13 211/10</p> <p>recovers [1] 280/6</p> <p>recovery [10] 145/12 206/6 208/8 208/17 208/19 225/15 229/13 229/18 269/21 269/25</p> <p>recross [2] 196/5 196/10</p> <p>recurve [1] 202/20</p> <p>red [6] 192/20 236/11 289/12 290/18 290/19 304/10</p> <p>red-and-blue [1] 192/20</p> <p>redaction [1] 308/12</p> <p>redirect [3] 190/22 191/1 231/20</p> <p>refer [1] 140/24</p> <p>reference [4] 217/13 226/7 265/2 266/5</p> <p>referencing [1] 218/4</p> <p>referred [4] 152/2 173/19 202/4 287/24</p> <p>reflect [5] 162/10 253/25 254/2 256/9 256/11</p> <p>reflection [1] 250/19</p> <p>reflective [1] 293/5</p> <p>refresh [3] 154/14 154/20 170/12</p> <p>regard [2] 143/5 258/10</p> <p>regarding [3] 140/4 176/23 240/14</p> <p>regards [1] 191/23</p> <p>regularly [1] 273/8</p> <p>reiterate [1] 261/12</p> <p>reiterated [1] 239/15</p> <p>rejoined [2] 192/21 192/24</p> <p>related [1] 136/22</p> <p>relationship [3] 202/12 203/9 203/22</p> <p>relaxed [1] 267/4</p> <p>release [3] 149/3 176/19 176/24</p> <p>released [6] 149/4 149/7 149/8 149/9 176/20 177/2</p> <p>releasing [2] 149/16 149/16</p> <p>relevance [1] 226/8</p> <p>relevancy [1] 225/21</p> <p>relevant [4] 137/23 176/18 220/21 259/20</p> <p>relied [2] 169/18 210/4</p> <p>rely [2] 285/25 286/1</p> <p>relying [1] 210/4</p> <p>remained [1] 156/12</p> <p>remaining [1] 270/1</p> <p>remains [1] 242/14</p> <p>remarkable [1] 271/1</p> <p>remember [24] 142/10 154/4 164/25 174/20 177/22 185/14 186/2 186/13 186/15 193/20 222/13 271/15 272/18 274/2 276/15 279/1 286/4 286/6 286/6 289/22 290/23 302/2 302/17 308/1</p> <p>remind [2] 142/9 252/16</p> <p>remove [1] 264/20</p>
Q	<p>qualified [10] 198/17 198/24 199/2 200/19 200/19 227/11 227/12 227/20 228/15 228/16</p> <p>qualify [1] 140/10</p> <p>Quantico [1] 198/9</p> <p>question [37] 137/17 138/12 144/15 144/22 172/19 173/6 173/11 173/15 178/21 183/11 208/3 208/10 208/24 209/12 209/19 224/12 226/6 227/2 227/3 228/20 230/1 230/7 233/23 238/11 242/5 250/18 252/18 252/23 252/24 252/25 266/21 268/10 280/1 283/23 293/2 302/6 307/25</p> <p>questioned [3] 176/9 181/23 285/16</p> <p>questioning [6] 154/6 176/10 178/4 285/13 295/25 302/21</p> <p>questions [14] 151/4 151/13 183/12 191/3 192/4 196/3 212/18 231/18 251/15 252/13 252/16 252/25 296/23 305/1</p> <p>quick [2] 230/18 237/3</p> <p>quickly [11] 156/7 162/13 162/13 194/1 290/23 296/21 299/9 300/16 300/18 300/23 301/11</p> <p>quite [4] 219/10 219/17 282/8 297/15</p>		
R	<p>race [1] 292/3</p> <p>racially [1] 292/2</p> <p>racially-diverse [1] 292/2</p> <p>radio [5] 157/22 157/25 158/2 158/22 159/15</p> <p>rain [2] 277/16 297/1</p> <p>raincoat [1] 277/18</p> <p>raining [2] 277/15 277/19</p> <p>raise [3] 138/7 197/7 280/3</p> <p>raised [3] 201/5 201/5 245/9</p> <p>ran [10] 156/12 193/16 275/20 277/24 288/23 289/3 293/3 303/20 303/20 303/20</p> <p>rank [1] 151/11</p> <p>rate [4] 208/8 208/17 208/19 229/18</p> <p>rather [1] 138/6</p> <p>rational [1] 239/12</p> <p>ray [1] 291/10</p> <p>RDB [1] 135/6</p> <p>reach [2] 142/14 285/7</p> <p>reached [3] 140/2 160/24 303/15</p>		

Case 1:09-cr-00560-RDB Document 60 Filed 08/03/10 Page 201 of 210			
R	<p>renew [4] 245/4 249/24 255/16 257/7</p> <p>repeat [1] 204/2</p> <p>repeatedly [1] 182/16</p> <p>repercussions [1] 171/10</p> <p>rephrase [2] 173/11 173/15</p> <p>report [64] 137/6 137/7 146/14 147/8 147/13 147/19 147/20 147/24 148/2 148/20 148/21 149/17 149/21 167/17 167/19 167/24 168/7 168/11 168/17 168/19 169/9 169/16 171/3 171/15 174/8 174/11 174/23 175/10 175/12 175/16 176/23 177/7 177/8 177/10 177/19 180/2 191/4 191/11 191/12 191/21 209/7 209/8 214/21 214/24 214/25 215/6 216/4 216/5 216/9 216/12 216/16 216/22 216/24 217/10 217/13 217/13 218/1 218/11 218/12 218/19 219/5 285/22 299/14 299/18</p> <p>Reported [1] 135/24</p> <p>Reporter [2] 135/25 308/15</p> <p>reports [14] 167/10 169/18 170/3 171/24 191/14 209/7 216/2 238/18 238/21 285/15 285/16 285/25 286/1 286/7</p> <p>representation [2] 141/14 243/24</p> <p>reprimand [5] 148/8 149/19 150/6 150/21 151/2</p> <p>reprimanded [5] 146/11 146/13 148/19 171/23 189/25</p> <p>reproduction [1] 201/22</p> <p>request [3] 167/3 217/9 218/8</p> <p>requested [10] 178/25 217/7 245/1 249/16 250/5 250/11 250/25 253/4 253/15 266/18</p> <p>requesting [1] 217/12</p> <p>required [6] 137/5 242/16 250/10 251/2 251/4 251/12</p> <p>requirement [1] 237/24</p> <p>requiring [1] 244/15</p> <p>resemblance [1] 302/22</p> <p>resembled [2] 153/23 274/20</p> <p>reserve [1] 245/24</p> <p>respect [17] 136/20 142/25 144/11 181/10 208/9 220/15 226/14 227/17 227/23 238/3 238/10 238/12 238/15 239/18 239/23 244/25 260/4</p> <p>respond [3] 287/12 300/16 300/18</p> <p>responded [2] 225/7 287/13</p> <p>response [5] 144/14 181/14 181/15 185/2 293/5</p> <p>responsibility [2] 175/9 177/9</p> <p>responsive [1] 226/6</p> <p>rest [3] 236/23 263/1 285/19</p> <p>rested [2] 237/13 247/4</p> <p>restored [4] 235/6 260/15 261/11 269/1</p> <p>rests [6] 232/9 236/7 237/5 237/7 247/10 298/23</p> <p>result [6] 148/5 150/21 150/25 151/5 179/2 226/14</p>	<p>results [4] 178/11 218/12 221/17 221/20</p> <p>resumed [1] 145/6</p> <p>retrieval [1] 165/6</p> <p>retrieve [1] 297/4</p> <p>retrieved [4] 166/12 174/13 285/23 297/25</p> <p>return [4] 143/21 281/8 301/18 308/3</p> <p>returning [1] 263/16</p> <p>review [5] 146/14 170/12 170/12 171/4 174/18</p> <p>reviewed [6] 136/12 136/14 136/21 138/15 147/24 269/8</p> <p>reviews [1] 172/6</p> <p>revolver [2] 210/16 234/7</p> <p>Richard [1] 135/13</p> <p>rid [1] 295/9</p> <p>ridge [36] 199/20 201/2 201/6 201/6 201/7 201/13 201/23 202/9 202/13 202/15 202/20 203/4 203/5 203/7 203/10 203/12 203/15 203/19 204/14 204/20 204/22 205/10 205/12 205/13 205/16 206/24 211/15 213/1 213/15 221/23 222/9 222/11 222/13 222/15 222/17 222/19</p> <p>ridges [2] 202/22 203/5</p> <p>right [138] 139/21 141/25 142/22 147/10 147/24 150/5 151/24 153/13 153/24 155/13 155/24 156/5 156/25 157/14 157/21 160/4 160/11 160/22 161/7 162/10 162/12 162/20 163/1 163/6 163/10 164/14 165/21 168/10 169/6 169/19 169/22 170/7 171/9 172/12 174/25 174/25 175/8 175/24 177/20 178/10 183/9 185/6 188/16 189/9 189/15 193/7 193/25 194/3 194/11 196/11 197/7 200/14 208/21 212/12 212/12 213/3 213/6 213/10 213/16 214/21 214/25 215/4 215/13 218/7 218/16 222/12 222/24 224/10 225/11 226/3 226/10 227/13 230/16 230/19 230/20 232/13 233/20 234/13 234/16 236/3 236/10 236/19 237/2 237/3 237/7 237/13 237/17 237/23 239/23 240/8 240/12 240/19 240/22 241/21 241/23 242/1 242/8 243/3 243/21 244/22 244/24 245/8 246/14 246/17 246/20 246/22 247/10 247/12 248/5 249/8 250/1 251/16 251/25 256/6 256/21 258/20 258/25 259/10 261/1 261/22 262/11 262/22 263/7 264/2 264/21 265/8 266/16 269/11 271/20 273/13 275/24 277/4 280/24 283/8 288/7 290/24 294/25 295/6</p> <p>right-handed [1] 212/12</p> <p>rights [9] 142/24 143/5 233/12 235/6 236/20 244/3 260/15 261/10 269/1</p> <p>robberies [1] 225/5</p> <p>rock [1] 306/7</p> <p>role [6] 189/11 226/12 248/9</p>	<p>rolling [1] 201/24</p> <p>room [5] 143/15 186/2 242/23 263/16 297/10</p> <p>rotated [1] 152/17</p> <p>rough [2] 205/15 207/6</p> <p>round [1] 211/15</p> <p>rounded [3] 211/16 211/18 278/5</p> <p>roundness [1] 211/14</p> <p>rounds [1] 166/19</p> <p>routine [2] 167/7 167/7</p> <p>routinely [1] 250/2</p> <p>RPR [2] 135/24 308/14</p> <p>rubber [11] 206/17 206/18 206/19 206/21 206/22 207/1 207/2 207/8 208/16 211/13 306/24</p> <p>rule [13] 209/15 209/18 236/10 236/15 237/15 237/18 238/14 238/18 238/20 239/10 239/17 245/4 245/11</p> <p>Rule 16 [2] 209/15 209/18</p> <p>Rule 29 [9] 236/10 236/15 237/15 237/18 238/14 239/10 239/17 245/4 245/11</p> <p>Rule 803 [1] 238/18</p> <p>rules [1] 183/1</p> <p>ruling [1] 184/13</p> <p>run [11] 272/1 273/8 273/12 292/15 293/18 294/13 304/1 304/12 307/12 307/12 307/14</p> <p>running [28] 156/11 157/20 157/22 159/17 161/25 162/6 192/7 192/14 195/7 273/8 273/10 276/10 276/12 292/5 292/10 292/17 293/20 293/20 294/14 294/19 295/21 295/21 296/3 296/6 296/7 304/3 304/11 307/14</p> <p>runs [3] 278/12 304/12 304/12</p> <p>rush [1] 248/22</p> <p>rushing [1] 296/8</p> <p>rust [3] 274/8 306/9 307/18</p> <p>rusted [1] 274/7</p> <p>rusty [1] 296/25</p> <p>Ryder [9] 158/6 158/25 160/9 273/1 287/24 288/3 290/8 290/20 290/22</p>
S	<p>S-E-A-N [1] 197/12</p> <p>safekeeping [1] 166/23</p> <p>safety [1] 194/22</p> <p>said [70] 139/16 158/6 160/4 161/6 161/21 162/19 165/7 165/20 169/1 169/9 171/4 171/5 171/6 171/7 174/14 174/16 175/3 175/18 176/11 179/25 180/6 182/4 183/8 183/17 185/2 188/14 188/25 189/1 189/20 219/25 220/1 221/2 223/12 226/1 230/7 231/12 245/22 265/24 271/25 272/2 272/16 272/23 273/1 273/3 274/19 279/3 279/4 283/15 285/22 289/5 289/17 289/18 293/9 295/19 298/11 299/14 300/4 300/6 300/7 301/5 302/19 304/5 304/18</p>		

S	scored [1] 200/2	set [6] 203/10 239/13 248/6 267/8 267/23 302/12
said... [7] 305/10 305/23 305/23 305/24 305/25 306/11 306/14	screen [2] 215/19 217/23	Seventeen [1] 155/3
sails [1] 220/2	scrutinize [1] 301/1	several [2] 146/18 179/1
same [21] 151/4 170/11 175/18 177/8 186/9 202/21 203/11 203/22 203/22 214/4 218/18 219/25 231/5 241/11 267/7 267/8 274/9 274/20 278/10 278/10 290/14	Sean [6] 197/6 197/8 197/12 216/18 298/7 309/9	Shaking [1] 259/9
samples [1] 167/1	search [1] 193/25	shall [1] 259/22
sanctioned [1] 285/15	searched [2] 147/4 305/22	shape [1] 153/25
Sand [5] 251/6 252/15 254/9 261/23 262/7	searches [1] 278/19	she [19] 147/8 147/9 147/15 147/16 149/20 149/21 174/25 175/3 175/3 175/3 175/8 175/11 176/2 176/4 177/14 177/15 177/16 304/17 307/7
satisfied [6] 233/11 243/7 243/15 243/24 244/18 244/23	searching [1] 193/14	She's [2] 173/6 302/11
satisfy [3] 141/8 238/16 280/14	seated [3] 245/16 247/3 248/5	shed [3] 295/10 305/7 306/6
saw [50] 153/8 156/16 156/16 158/21 159/10 160/6 166/7 180/11 181/4 192/1 274/16 274/17 274/19 274/20 275/25 278/5 280/4 281/22 282/4 282/5 282/6 283/12 283/18 283/21 283/23 283/24 286/21 288/24 288/25 293/22 293/23 294/2 295/18 295/20 296/13 301/9 302/11 302/11 302/20 302/21 303/11 304/17 304/23 305/2 305/3 305/4 305/10 305/11 307/8 307/17	second [27] 139/6 143/25 156/3 168/1 175/24 205/2 215/6 215/11 216/23 229/11 229/21 254/25 256/7 256/15 256/18 260/17 261/5 261/22 262/19 268/17 276/13 283/24 288/23 289/6 289/8 292/1 300/11	sheet [2] 154/3 154/14
say [37] 141/11 147/17 153/9 156/2 159/25 163/13 165/8 165/10 166/13 168/8 168/11 174/24 178/5 187/16 189/2 191/13 206/3 209/8 209/13 213/9 213/20 213/24 214/5 233/24 276/9 277/2 277/3 278/18 281/22 282/6 289/7 298/8 302/10 303/7 303/8 303/8 305/22	seconds [3] 156/10 273/19 295/22	shift [10] 152/25 168/22 169/7 169/7 187/5 270/20 286/19 287/8 287/9 299/9
saying [18] 144/7 154/5 155/9 159/2 159/3 175/2 177/1 185/22 208/18 213/21 213/23 222/1 224/20 276/16 288/25 299/25 300/3 303/2	Section 921 [2] 234/8 235/5	shimmers [1] 276/2
says [28] 154/5 168/9 183/14 183/16 209/6 216/17 219/25 221/3 221/16 233/22 233/22 264/23 269/12 278/11 283/18 283/21 283/24 291/25 295/24 297/7 303/6 303/9 304/4 304/17 305/19 306/19 307/7 307/15	secure [1] 194/20	shined [2] 274/14 305/20
scanned [3] 148/3 175/18 175/19	secured [2] 164/11 306/11	shines [2] 273/25 276/2
scared [3] 162/4 162/6 301/11	security [4] 158/25 290/9 290/10 290/22	shirt [7] 180/3 180/4 190/13 271/22 289/15 289/17 290/4
scenario [2] 206/7 207/2	seductive [1] 282/16	shirts [1] 242/15
scene [21] 147/7 147/22 159/20 159/22 165/3 166/2 185/16 224/15 224/22 225/7 225/11 226/15 227/1 227/12 227/13 227/21 227/21 229/3 230/2 230/5 298/1	see [51] 136/14 144/2 144/4 153/12 161/7 162/18 162/22 162/22 162/23 162/23 171/11 182/19 190/14 201/14 201/15 211/2 213/1 217/10 217/14 218/11 218/12 220/8 221/10 225/22 248/13 264/25 271/20 272/22 273/3 273/3 274/7 278/17 278/18 278/19 278/19 287/21 288/9 290/3 291/7 291/7 291/8 291/8 291/9 291/12 291/12 293/7 293/24 295/2 296/21 302/23 304/21	shooting [15] 152/10 152/20 152/21 153/15 162/5 163/19 163/20 163/21 180/2 185/16 288/15 296/17 299/2 299/4 302/21
scenes [2] 225/4 226/12	seek [1] 241/15	short [5] 157/15 157/17 252/25 268/3 301/12
schedule [1] 267/23	seem [1] 285/21	shortens [1] 143/17
scheduled [1] 152/13	seemed [1] 299/13	shortly [1] 273/18
scope [2] 209/19 225/21	seems [5] 179/10 232/23 238/5 246/12 255/6	shorts [1] 289/15
	seen [9] 138/14 166/10 173/21 184/24 216/9 289/24 293/25 304/17 305/15	shot [1] 279/15
	segregated [1] 291/20	should [29] 141/4 171/17 209/15 218/17 220/5 227/5 227/11 227/11 227/19 227/19 228/1 228/14 228/15 228/18 231/23 244/11 246/21 247/24 255/7 256/24 259/4 263/10 264/9 270/25 276/10 276/11 279/24 279/25 303/9
	selling [1] 146/19	should've [2] 175/16 279/12
	Senate [1] 284/22	shouldn't [2] 196/12 235/23
	send [1] 259/1	show [12] 154/19 158/9 161/2 167/22 172/16 190/8 210/12 215/6 223/18 254/6 256/23 298/4
	senior [2] 147/22 167/13	showed [1] 304/16
	sense [11] 163/2 255/7 261/25 262/10 270/13 275/21 277/5 282/11 288/6 295/17 308/1	showing [1] 258/4
	senses [1] 278/9	shows [1] 273/21
	sent [3] 136/19 224/3 224/6	shrubbery [1] 294/11
	sentence [6] 140/11 140/12 254/23 254/25 255/5 260/5	shut [3] 166/4 166/5 192/16
	sentences [1] 140/14	side [12] 153/12 202/20 202/21 202/23 202/24 212/12 240/3 245/25 248/6 271/13 279/8 303/21
	separate [2] 168/25 266/19	Siffert [5] 251/7 252/15 254/9 261/24 262/8
	sequestration [1] 196/21	sight [6] 157/24 158/4 278/1 278/2 278/4 295/3
	Serial [2] 234/7 259/19	sign [1] 158/16
	serious [1] 249/20	signature [1] 168/2
	serve [2] 141/17 151/24	signed [6] 147/19 148/4 168/5 168/19 169/9 216/18
	served [1] 140/16	significance [3] 242/19 254/7 257/1
	service [1] 224/17	significant [7] 285/24 287/25 288/8 291/23 294/16 297/12 297/16

S	sole [1] 270/22	254/20 256/12
signing [1] 147/13	some [43] 140/14 146/4	specifics [2] 182/5 182/7
similar [1] 214/7	159/15 160/5 160/6 163/10	speculate [1] 235/21
similarity [6] 180/22 181/1	167/10 171/17 181/5 191/11	speeches [1] 226/7
181/5 181/10 213/9 271/1	191/17 192/11 192/21 207/1	spell [1] 197/10
similarly [1] 293/20	207/10 207/10 219/18 220/17	spelling [1] 217/1
simple [7] 140/21 179/11	222/13 223/3 224/19 226/5	spent [1] 299/12
268/11 280/1 282/17 282/21	232/19 239/5 239/5 247/19	split [1] 203/7
284/12	250/23 255/9 256/4 256/25	spoke [1] 145/12
simplicity [1] 282/16	257/10 262/17 262/24 263/17	spoken [1] 181/19
simply [6] 184/9 217/8 218/6	275/17 287/16 289/15 290/22	spontaneously [1] 300/22
226/17 227/3 252/22	291/19 292/18 292/20 298/10	spot [1] 149/7
single [2] 208/14 209/8	299/1	spots [1] 152/6
singular [1] 249/17	somebody [3] 159/17 202/3	spotted [2] 271/11 271/12
SIPPEL [16] 135/17 139/17	276/5	squad [2] 152/2 152/3
197/4 197/17 200/21 200/23	somehow [3] 141/17 276/21	squirrel [1] 296/5
206/11 207/22 210/11 212/22	279/24	stage [1] 142/14
231/20 245/18 267/25 281/13	someone [23] 161/6 161/6	stamped [1] 269/11
281/21 290/16	180/3 180/11 181/5 183/7	stamping [1] 211/20
Sippel's [1] 282/14	219/17 224/20 229/8 229/14	stand [14] 136/6 143/21
sir [27] 143/2 145/2 145/4	277/13 277/17 279/14 284/18	145/6 165/5 196/14 197/1
145/9 191/5 191/16 191/25	284/20 288/14 290/12 290/22	231/25 241/24 242/21 267/9
192/8 193/13 196/15 197/9	292/6 293/15 297/3 302/20	270/18 280/8 283/12 299/23
231/23 240/18 241/25 242/2	303/25	standard [6] 190/17 239/10
242/7 243/2 243/6 243/9	someone's [1] 172/21	239/13 282/22 283/1 283/3
243/14 243/17 243/20 244/1	something [44] 149/13 150/16	standing [5] 174/25 193/23
244/5 244/17 244/21 245/5	152/15 156/2 159/3 161/22	194/12 194/13 306/12
siren [3] 271/17 272/12	163/23 167/2 171/18 176/18	start [7] 156/22 168/22
276/8	183/7 183/16 190/16 220/4	188/20 220/17 266/3 267/6
sirens [9] 155/17 155/21	220/16 225/8 263/10 273/13	289/3
195/5 278/12 289/13 290/16	273/17 277/13 278/5 279/9	started [9] 156/11 158/2
290/17 305/14 307/13	279/9 283/5 283/6 287/12	161/20 163/11 168/22 169/2
sit [1] 285/21	289/5 289/7 290/17 295/5	192/14 272/4 303/2
sitting [7] 164/24 196/20	296/2 296/9 303/12 303/15	starting [1] 215/15
274/15 277/17 278/20 287/5	303/24 304/23 305/4 305/10	starts [1] 303/10
297/23	307/1 307/4 307/12 307/15	stash [3] 296/18 296/19
situation [11] 165/25 174/16	307/16 307/17	296/22
175/14 177/13 180/1 183/19	sometimes [8] 143/12 143/18	stashed [3] 274/12 296/16
189/25 279/15 283/18 290/24	154/4 154/5 165/12 280/20	306/3
297/22	284/19 292/15	state [7] 144/12 197/10
situations [1] 171/23	soon [2] 142/3 304/2	260/15 269/18 269/20 269/21
six [1] 136/23	sopping [1] 277/19	271/3
size [3] 153/25 212/14	sorry [18] 139/2 139/8	stated [3] 147/16 174/12
274/20	143/11 150/5 150/11 169/8	245/12
skin [25] 201/2 201/5 201/5	173/7 183/23 192/18 215/11	statement [12] 146/14 174/1
201/6 201/13 201/23 201/24	221/10 248/19 260/2 262/15	186/16 191/10 191/12 233/22
201/25 202/1 202/13 203/15	264/11 267/11 269/7 272/11	252/18 252/19 252/20 268/12
204/14 204/20 204/23 205/12	sort [4] 141/15 239/5 291/17	270/5 276/14
205/16 206/24 211/15 213/15	298/20	statements [3] 169/10 191/4
213/17 222/9 222/11 222/15	sorts [1] 306/25	191/14
222/17 222/19	sound [4] 173/6 219/12	STATES [9] 135/1 135/4
skipped [1] 272/5	246/14 246/16	135/13 234/8 239/13 239/15
skipping [1] 156/5	sounds [1] 297/8	259/21 269/24 284/22
slow [3] 156/9 195/5 248/20	Southwest [9] 145/19 145/20	statistical [2] 208/22 239/4
slowed [2] 273/15 273/16	146/1 148/15 149/1 150/1	status [9] 178/17 178/21
small [4] 155/8 171/10	151/7 152/2 153/2	179/14 179/20 181/12 182/20
171/12 209/7	Southwestern [5] 151/24	182/24 182/25 185/3
smear [5] 204/18 205/22	165/16 165/18 176/6 286/20	statute [7] 140/6 141/2 141/2
206/2 206/15 229/21	space [1] 305/9	235/17 259/20 263/12 263/14
smear [1] 279/6	Spanish [1] 217/2	stay [8] 143/14 156/22 157/2
smoke [1] 275/14	speak [1] 299/24	196/23 197/3 236/13 237/10
smooth [7] 205/4 205/6	speaking [2] 147/10 295/8	275/15
205/15 206/25 212/6 212/11	special [8] 144/10 144/19	stayed [1] 155/24
212/14	177/4 238/23 269/6 269/8	stays [1] 196/24
smudge [2] 229/4 229/7	269/16 280/13	step [5] 160/4 196/12 231/23
snitch [1] 149/5	specific [11] 210/25 211/9	283/24 303/19
snitched [1] 149/5	213/5 213/12 213/21 250/6	steps [3] 204/5 284/7 303/1
so [196]	250/9 250/23 251/1 251/3	still [13] 145/3 179/4
sobeit [1] 183/15	251/11	192/17 193/14 193/23 194/11
social [1] 217/2	specifically [8] 137/22 199/2	194/13 211/2 257/7 273/2
	242/18 247/5 253/18 254/3	273/3 300/9 304/11

S	297/21 299/15 300/3 suggested [1] 255/19 suggesting [1] 297/15 suggestion [1] 290/11 suing [1] 186/16 suit [1] 185/13 suitable [19] 199/16 199/18 199/19 202/11 207/5 207/18 211/6 211/14 211/21 212/10 212/14 216/17 221/13 222/2 222/25 223/17 224/11 306/21 307/4 summarize [1] 259/2 summary [3] 136/17 137/21 239/5 Sunday [1] 152/17 Sundays [1] 152/16 superhuman [3] 286/12 287/20 294/19 superior [3] 177/13 177/14 177/15 supervise [1] 171/24 supervised [1] 167/10 supervising [1] 167/16 supervision [2] 137/8 174/9 supervisor [5] 137/6 168/5 175/9 175/14 224/16 supervisors [1] 169/21 supports [1] 301/19 supposed [6] 149/11 176/25 187/8 306/14 306/18 306/20 sure [41] 141/7 142/10 143/4 148/3 148/25 159/10 160/5 166/3 167/20 181/10 189/16 190/9 199/25 202/9 203/18 203/21 213/11 227/2 227/22 227/23 228/4 233/11 239/25 241/25 244/11 249/4 250/2 260/6 262/25 274/18 284/8 289/20 289/22 295/19 295/20 296/12 296/12 299/21 300/20 300/22 301/3 surface [20] 204/11 205/4 205/6 205/15 207/1 207/8 211/13 211/13 211/16 211/19 211/24 211/25 212/3 212/4 212/6 212/8 212/10 222/9 229/20 229/21 surprised [1] 165/19 surprises [1] 281/2 surround [1] 159/21 surrounded [1] 282/12 suspect [20] 136/7 152/20 152/21 153/21 154/1 162/5 162/23 180/15 180/23 181/7 181/8 181/9 203/2 241/12 274/24 288/14 299/2 299/4 302/21 302/23 suspect's [1] 147/25 suspected [1] 153/14 suspects [2] 180/2 200/5 suspended [3] 148/13 149/24 151/9 suspensions [1] 257/12 sustain [5] 172/11 174/1 174/1 260/11 268/13 sustained [13] 136/25 137/23 138/18 171/21 172/14 172/20 172/20 173/10 173/24 174/4 186/23 189/23 227/7 swab [1] 167/1	sweat [1] 201/8 switch [1] 145/13 sworn [2] 145/6 197/8 sympathy [2] 248/11 249/25 system [6] 280/19 280/22 280/22 280/23 284/24 284/25 T T-shirt [7] 180/3 180/4 190/13 271/22 289/15 289/17 290/4 tablecloth [2] 287/1 287/5 tables [1] 266/4 tackled [4] 292/19 305/13 305/13 307/19 tackles [1] 295/22 tag [2] 166/13 263/6 take [27] 147/1 158/20 165/10 190/16 201/14 205/14 216/19 237/3 242/21 246/21 247/24 248/21 254/21 261/24 262/7 265/9 270/4 281/16 282/9 283/12 292/12 298/4 304/23 305/10 307/1 307/21 307/23 taken [5] 147/2 200/1 261/23 287/18 297/9 taking [3] 160/4 255/4 281/17 talk [18] 145/14 156/3 174/6 186/13 227/11 243/4 271/25 272/2 275/18 289/5 289/8 292/1 292/6 299/23 302/23 302/25 303/7 303/9 talked [5] 186/3 287/16 290/17 290/18 307/2 talking [11] 138/17 158/2 170/11 174/19 174/22 188/20 192/18 192/19 206/13 213/11 213/19 tall [1] 275/25 taller [1] 299/6 TANG [1] 135/19 tangent [1] 141/15 tape [3] 201/18 205/7 223/3 tapping [1] 201/24 task [1] 139/13 Taurus [5] 234/6 259/18 269/14 269/17 269/19 TB12626 [1] 234/7 TB12626N [1] 259/19 team [1] 263/6 teasing [2] 236/18 263/3 technically [1] 168/25 technician [2] 225/1 225/2 techniques [7] 226/11 250/6 250/10 250/23 251/2 251/3 251/12 telephone [1] 182/18 television [1] 196/19 tell [31] 145/15 149/9 158/1 168/20 180/25 185/13 198/3 199/6 199/17 202/6 202/15 202/16 206/17 217/6 222/5 222/14 224/18 226/16 232/24 242/18 246/19 246/23 273/7 273/22 275/19 278/16 279/6 279/13 282/20 283/12 298/9 telling [3] 161/20 183/9 277/6 tells [4] 273/5 273/23
----------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

T	144/25 145/1 145/4 145/9	242/18 243/8 243/11 243/18
tells... [2] 273/24 288/6	151/14 151/16 183/23 190/20	243/25 246/25 257/24 266/2
temporary [1] 203/1	190/21 196/3 196/11 196/15	266/5 266/8 271/5 272/12
ten [6] 232/21 232/21 237/9	197/5 197/14 200/22 212/19	276/23 282/24 285/20 286/7
237/10 250/8 267/23	212/21 212/22 217/18 217/24	288/18 293/21 295/11 300/2
tend [3] 253/23 255/8 256/3	226/21 228/25 231/19 231/22	300/5 300/18 300/20
tens [1] 198/15	232/1 233/17 234/4 236/25	themselves [1] 207/20
term [7] 189/12 189/13 235/4	238/9 248/3 262/2 264/12	then [102] 140/20 142/5
259/17 259/23 260/14 261/7	265/20 266/24 267/21 268/1	142/13 142/15 144/10 146/25
terms [25] 136/9 183/4	281/12 281/13 281/15 301/21	154/8 156/25 157/10 158/6
183/25 184/13 184/13 184/22	301/22 301/24 308/7 308/8	161/19 164/13 166/3 171/7
206/18 209/19 209/19 226/13	that [1070]	174/1 183/8 185/18 185/19
227/19 227/24 228/21 235/15	that's [162] 138/6 138/19	185/23 186/5 186/7 189/6
236/12 238/11 238/18 238/19	139/21 141/11 141/25 142/17	190/13 190/16 192/1 192/21
239/3 244/8 248/8 250/2	154/3 160/25 163/15 167/2	193/10 193/17 195/14 197/10
258/3 258/4 274/8	171/19 173/12 174/15 175/21	199/20 200/15 201/17 202/10
test [5] 198/10 199/24	177/4 180/12 180/17 180/19	202/16 202/21 203/3 203/7
199/24 200/2 234/10	182/3 183/8 183/14 188/10	203/12 203/19 203/20 204/1
test-fired [1] 234/10	188/13 190/10 197/2 197/12	204/15 204/17 204/24 204/25
tested [1] 306/21	199/1 199/20 199/24 201/2	205/12 206/5 213/2 216/23
testified [37] 144/11 152/8	201/25 202/5 204/7 204/13	217/13 218/11 220/15 222/24
156/1 156/16 170/15 170/18	204/16 205/25 206/2 206/5	232/8 232/19 233/12 236/19
183/17 193/11 199/7 199/8	206/14 206/16 206/24 207/4	238/13 241/21 242/17 245/3
199/10 215/24 226/1 231/10	207/12 208/10 208/11 208/23	245/15 246/9 247/20 247/24
238/25 272/7 274/7 286/19	209/16 209/18 210/5 212/3	247/25 248/7 249/22 250/5
287/22 289/4 289/6 289/11	212/8 213/4 213/7 213/23	251/15 252/22 252/24 253/14
289/16 289/18 290/8 290/14	214/5 214/8 214/12 214/15	254/24 256/7 256/7 256/21
291/3 294/2 303/11 303/14	214/19 214/25 215/4 215/6	258/15 258/20 258/25 260/1
303/18 303/22 303/23 304/2	218/8 218/14 218/19 219/7	261/1 261/12 261/17 261/22
304/14 304/22 306/23	219/20 220/1 220/19 221/14	262/22 263/7 263/8 263/15
testify [31] 170/3 170/6	221/15 221/18 221/21 221/25	264/3 271/15 272/4 273/21
170/24 198/17 199/14 199/16	222/3 222/21 223/4 223/7	276/9 276/24 277/11 278/6
216/3 232/14 232/18 232/19	224/23 225/3 225/9 226/8	290/20 293/10 305/13 305/18
233/1 241/23 241/24 242/1	226/19 227/5 227/9 227/10	theories [1] 227/25
242/4 242/9 242/10 242/11	227/14 227/16 229/3 229/19	theorizes [1] 282/17
242/20 243/5 244/3 244/4	230/15 230/17 230/18 230/21	theory [5] 227/12 228/14
244/5 244/6 244/20 244/24	231/15 234/20 235/13 235/19	282/21 282/23 282/24
244/24 251/16 251/18 276/19	236/16 236/16 237/6 238/2	there [256]
303/12	241/18 242/24 244/6 244/10	there's [31] 144/22 152/6
testifying [4] 142/25 142/25	245/1 245/8 246/11 248/21	152/23 181/5 202/18 202/21
178/24 216/8	249/4 249/8 249/21 250/17	203/6 203/24 204/17 212/6
testimony [41] 139/12 142/4	250/24 251/10 252/14 256/6	214/4 219/16 226/25 227/4
144/13 171/10 178/24 193/10	257/13 257/25 260/7 262/23	229/4 229/10 230/25 233/7
196/13 220/6 220/7 220/12	263/9 265/7 270/21 273/10	243/24 253/7 253/8 257/21
222/7 229/9 231/13 231/23	276/5 277/14 277/15 277/19	268/10 271/23 278/14 278/22
237/20 238/11 239/20 245/10	277/20 278/7 278/7 279/17	289/12 292/16 303/3 303/13
251/14 252/1 258/1 269/3	279/18 281/8 281/23 281/23	306/25
270/9 271/19 275/1 275/22	283/14 284/17 286/2 286/8	therefore [3] 222/18 269/18
276/18 277/21 278/1 278/2	287/4 288/7 291/11 296/6	269/21
280/11 282/1 294/7 298/20	297/5 297/6 297/8 297/14	these [34] 136/24 138/14
299/16 302/17 303/13 305/20	299/7 300/6 300/23 301/14	140/17 143/18 166/2 186/10
307/22 307/23 308/1	302/14 303/25 305/2 305/9	192/3 196/5 201/8 208/19
testing [2] 167/3 167/5	306/1 306/19 307/6 308/6	209/14 213/8 215/21 218/15
tests [1] 199/23	the alert [1] 287/11	238/20 238/21 254/11 265/19
text [2] 168/10 269/13	their [25] 147/1 162/23	266/1 266/4 268/3 272/18
texture [2] 205/15 207/6	166/3 184/10 203/9 203/15	275/3 283/7 283/11 286/7
textured [6] 207/1 207/2	205/24 220/17 229/11 243/24	288/10 289/9 290/12 294/8
211/12 211/24 212/3 212/5	258/1 277/1 280/7 286/19	295/11 300/18 306/24 307/1
than [37] 140/11 140/24	286/20 286/20 286/21 287/8	they [188]
141/2 141/9 141/12 156/8	293/16 299/3 299/9 299/10	they're [30] 137/23 137/24
170/7 176/17 176/20 177/5	303/15 303/16 303/24	140/22 154/5 154/5 154/6
177/16 183/17 224/16 245/19	them [61] 138/6 146/19	173/8 173/8 204/14 257/10
245/20 247/24 259/13 260/6	146/25 147/1 155/22 158/20	257/11 270/20 275/19 276/21
260/7 264/6 265/12 268/6	158/23 163/13 164/10 165/5	277/5 277/6 277/18 279/15
268/16 268/25 273/25 273/25	174/20 174/20 178/10 180/5	279/17 279/23 284/18 286/4
286/3 287/10 287/22 288/3	180/6 181/21 185/16 185/18	288/19 289/13 289/14 293/16
288/17 297/7 297/14 299/6	185/18 188/18 188/24 189/6	295/13 296/3 297/15 298/24
299/6 304/19 305/23	192/16 204/24 204/24 216/13	they've [5] 243/19 243/21
Thank [50] 138/5 138/9	217/17 223/22 224/4 224/6	243/22 243/25 306/24
139/24 142/12 143/7 143/22	224/18 232/21 232/23 232/24	thicker [1] 274/5
	233/6 233/10 233/10 233/12	thickness [1] 203/15

T	271/12 279/5 280/4 288/13 288/25 302/11 302/20 305/12 191/9 191/14 191/14 198/15 three [19] 138/18 142/2 165/15 174/3 188/18 198/6 202/12 202/18 203/10 203/14 204/12 213/25 214/13 221/6 262/19 263/20 268/13 280/15 300/17 three-year [1] 198/6 threw [8] 161/21 161/22 161/22 161/22 189/8 304/25 305/9 305/11 through [15] 158/18 161/13 208/13 210/7 237/20 240/5 240/23 241/1 247/6 250/8 270/17 275/17 280/12 280/21 296/3 throughout [3] 152/17 242/15 288/13 throw [12] 273/17 273/18 278/6 282/6 283/21 289/1 294/3 295/10 295/13 305/6 305/7 307/16 throwing [1] 179/17 throws [3] 276/24 294/25 307/14 thrust [2] 209/22 238/14 thud [2] 273/18 278/6 thumb [2] 212/13 212/16 ties [1] 281/20 time [54] 141/17 142/9 145/19 153/20 155/2 155/11 155/21 157/24 159/25 161/5 161/17 162/10 163/21 166/7 166/10 168/7 168/15 170/13 170/21 175/19 177/2 177/3 187/3 189/21 193/21 204/14 205/21 211/16 224/22 228/3 228/23 231/9 233/21 243/8 247/18 248/21 261/9 273/7 274/11 281/17 287/5 288/11 288/13 289/11 291/4 297/9 297/12 297/16 299/12 299/13 301/1 301/12 302/15 306/25 times [12] 157/14 165/9 179/1 198/20 198/21 226/2 231/10 231/11 252/17 278/2 278/3 294/17 timing [1] 238/5 tip [1] 279/7 tired [7] 286/23 286/24 287/6 287/15 287/17 299/19 301/10 title [2] 197/20 259/20 Tobacco [1] 269/7 today [10] 153/14 161/6 170/6 174/18 186/25 190/6 223/15 240/13 275/2 285/21 together [8] 195/14 253/24 255/11 256/5 285/2 285/3 307/21 307/23 told [41] 149/6 159/6 227/14 227/16 269/8 269/16 270/5 270/18 271/6 271/9 271/16 271/21 272/10 273/9 273/15 274/3 274/16 274/18 276/22 277/7 277/14 279/2 279/4 279/18 279/20 281/18 288/11 292/2 292/18 293/11 293/23	295/21 296/12 296/15 297/24 298/11 298/15 300/13 300/16 301/7 307/5 too [9] 163/4 185/4 188/25 204/17 220/5 279/4 283/6 299/13 306/16 took [20] 147/14 147/18 149/7 164/13 164/13 175/1 175/2 175/4 176/6 182/10 192/7 262/8 270/18 272/5 272/19 276/7 287/2 303/19 304/3 305/23 took it [1] 164/13 top [12] 168/7 201/4 205/24 212/5 212/6 264/23 271/22 274/6 274/13 278/20 289/17 295/10 topic [3] 219/23 226/5 250/14 toss [3] 268/9 274/21 295/5 total [4] 246/13 246/17 247/22 247/24 totally [1] 238/1 touch [10] 164/17 195/11 201/13 204/17 204/24 204/25 205/16 206/23 212/13 306/16 touched [6] 164/19 199/20 201/3 205/19 206/25 280/10 touches [1] 204/5 touching [3] 204/14 205/3 205/23 touchy [1] 291/17 toward [2] 294/22 303/19 towards [3] 156/17 288/5 291/6 Towson [1] 198/6 trace [1] 225/6 track [2] 281/17 288/12 trafficking [2] 144/14 144/20 training [4] 224/17 303/16 303/25 305/2 transcribed [1] 308/9 transcript [2] 308/11 308/13 transfer [7] 201/12 204/12 205/1 205/2 206/15 226/7 229/20 transferred [3] 148/15 150/1 151/7 transparent [1] 201/18 transported [1] 148/25 transporting [1] 146/25 trash [4] 294/13 296/4 301/13 306/5 trash-filed [1] 296/4 traveled [3] 259/11 268/19 269/23 Tresvant [1] 239/14 trial [14] 135/11 185/18 186/1 196/19 242/15 253/21 254/17 254/23 263/21 263/21 275/9 275/11 277/14 280/12 tricks [1] 281/1 tried [10] 157/5 180/3 185/16 195/11 199/11 199/11 279/4 297/21 306/15 306/16 trier [1] 239/12 trigger [2] 195/13 212/12 trip [1] 293/21 trouble [9] 147/19 149/16 150/23 177/11 177/17 177/18 188/10 188/12 188/14
----------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

T	unconscionably [1] 252/3 uncontradicted [1] 252/1 uncontroverted [1] 271/19 under [46] 137/8 137/14 145/3 146/24 174/9 179/25 181/16 182/25 183/22 184/13 209/15 209/18 210/16 238/18 239/10 242/11 243/11 246/7 246/8 270/18 274/6 274/12 274/12 274/14 274/22 276/18 283/25 284/8 288/20 289/21 291/14 292/6 292/20 295/3 295/19 296/2 296/2 297/1 298/24 300/9 300/14 300/18 301/9 301/11 305/24 306/5 underneath [3] 217/2 221/16 289/23 underside [1] 201/3 understand [21] 136/2 138/5 143/5 195/16 196/18 209/10 216/7 227/2 228/2 228/6 230/16 238/24 241/25 242/1 242/3 242/6 242/24 244/12 244/16 246/8 282/18 understandable [2] 141/23 292/6 understanding [4] 239/19 243/3 244/2 244/3 understood [2] 228/3 257/24 undisclosed [1] 181/6 unfortunate [1] 302/12 unfortunately [1] 178/18 uniform [1] 289/14 uniformed [4] 163/10 165/2 165/20 297/25 unit [11] 139/19 144/20 198/2 198/7 214/24 216/15 216/24 224/25 225/3 279/13 279/16 UNITED [9] 135/1 135/4 135/13 234/8 239/13 239/15 259/21 269/24 284/22 units [5] 146/21 146/24 201/7 201/8 203/5 University [1] 198/6 unknown [4] 203/17 203/21 203/25 214/1 unlawful [1] 259/22 unless [1] 263/17 unlike [2] 174/18 200/19 unlikely [1] 231/25 unload [4] 194/23 195/12 195/13 211/23 unluckiest [1] 302/16 unmarked [4] 155/16 155/17 271/16 289/10 unnatural [1] 295/5 unnecessary [1] 250/11 unquestionably [1] 290/13 until [8] 215/19 231/24 247/20 248/2 263/2 267/9 273/14 287/2 unusable [1] 206/1 up [81] 146/19 147/13 147/15 149/4 149/15 149/15 149/20 150/22 153/8 153/8 153/9 153/12 159/5 161/8 161/20 163/8 164/4 164/4 176/17 180/4 181/20 182/18 188/12 189/3 189/4 189/8 194/11 194/18 194/19 195/9 195/9	195/11 195/19 199/8 199/25 201/7 205/16 206/24 212/8 212/8 219/14 219/18 221/11 225/10 225/12 227/3 228/24 237/10 250/5 250/8 251/25 253/6 267/8 272/1 273/10 273/21 279/3 279/3 280/8 285/1 287/1 290/9 292/8 293/5 293/15 293/19 293/21 294/5 294/21 296/3 299/23 303/13 303/22 304/13 304/14 304/23 305/7 306/6 306/8 306/15 307/14 upon [6] 149/2 169/18 228/15 235/18 239/10 263/16 urban [1] 294/6 us [24] 142/14 146/21 149/6 159/17 173/22 185/13 189/8 190/8 205/9 207/9 207/23 219/4 219/5 224/8 224/8 272/6 280/22 280/22 284/16 285/19 286/24 288/6 290/11 298/4 use [7] 146/6 189/15 202/7 203/17 205/17 267/7 307/25 useable [1] 205/23 used [9] 195/12 224/25 226/11 231/6 231/7 254/4 256/13 292/22 296/19 useful [1] 184/12 uses [2] 141/22 229/14 using [4] 137/2 188/8 188/22 189/9 usually [8] 173/25 188/17 190/12 191/11 206/23 207/1 287/7 288/7 utilized [1] 240/5
	V	
	vacant [1] 272/8 valid [1] 219/7 Values [1] 269/13 variance [1] 250/12 veer [2] 157/11 293/10 vehicle [8] 155/16 155/24 185/15 192/9 271/15 271/16 271/18 293/11 verbal [4] 148/7 151/2 189/18 289/9 verbatim [2] 251/6 253/16 verdict [7] 264/3 281/9 300/12 301/18 301/20 308/3 308/6 verification [1] 200/3 verified [1] 200/6 verify [1] 243/23 version [1] 254/9 versus [5] 208/16 208/16 214/1 228/19 229/9 very [63] 139/4 139/4 145/1 145/4 156/7 156/7 161/23 161/25 166/7 166/7 168/4 169/1 169/1 171/12 171/16 180/1 196/11 198/25 205/6 205/20 206/13 206/25 211/12 211/13 211/24 211/25 212/3 212/4 212/5 232/1 238/9 243/21 248/3 270/2 274/11 281/13 282/17 282/18 283/2 284/6 284/6 286/19 287/14 287/14 291/3 291/7 291/14	
U		
U-turn [3] 153/20 155/13 271/13 U.S [3] 135/25 198/23 308/15 U.S.C [1] 235/5 ultimate [1] 184/8 ultimately [2] 180/6 272/4 umbrella [1] 277/18 unable [2] 199/12 226/1 unanimity [1] 263/8 unanimous [1] 285/5 uncomfortable [2] 285/14 292/10		

V	v	v
very... [16] 291/14 293/12 293/13 294/18 295/1 295/19 296/9 298/3 298/24 298/24 301/12 302/1 304/6 305/25 306/8 306/15	way [43] 138/6 140/23 141/4 141/23 150/18 155/10 161/8 164/9 175/3 175/8 184/7 188/23 189/15 196/17 208/10 208/15 222/16 226/17 226/25 227/4 228/18 228/19 229/22 230/6 232/23 233/8 242/22 252/4 252/12 266/19 277/6 278/14 279/3 279/17 279/18 282/16 285/5 286/20 293/19 294/9 296/6 303/25 304/17	we've [9] 210/6 238/4 250/8 253/4 253/5 262/15 262/22 268/23 294/18 weapon [16] 161/21 162/25 164/11 166/19 166/20 174/13 212/17 229/3 238/23 238/25 239/1 269/11 292/23 296/22 297/18 306/11 wear [4] 190/12 190/13 190/13 299/3 wearing [15] 150/13 150/14 180/3 180/4 190/10 229/8 229/9 258/2 289/14 291/3 291/8 293/17 303/5 303/5 303/14 week [1] 186/6 weigh [3] 155/4 171/17 300/19 weighed [3] 253/24 255/10 256/4 weights [1] 299/6 weight [6] 154/9 154/12 155/12 200/18 271/7 287/4 well [57] 138/8 140/20 146/22 158/18 163/17 164/11 165/2 165/15 167/13 168/15 170/15 171/18 175/11 177/11 178/20 179/19 180/7 181/15 183/6 183/8 185/25 186/13 188/14 188/24 189/17 189/18 204/6 208/18 213/12 215/7 219/7 231/3 236/4 241/20 245/11 247/23 257/25 258/12 262/24 270/9 272/16 272/18 276/22 277/8 285/5 285/12 290/19 291/7 296/9 296/21 296/24 297/2 297/24 300/15 305/6 306/3 306/15 went [8] 147/14 158/18 160/22 185/18 186/1 186/1 193/25 286/24 were [176] weren't [11] 158/24 165/2 167/14 170/21 178/3 183/13 187/5 187/7 187/19 290/25 290/25 West [1] 135/14 wet [1] 277/19 what [224] what's [18] 154/19 161/2 167/22 170/9 184/16 208/7 208/18 209/14 209/22 209/24 210/12 214/22 221/3 221/4 221/5 251/13 255/21 273/22 whatever [5] 147/3 181/13 200/18 249/1 257/12 whatsoever [1] 229/8 when [108] 138/17 139/15 139/22 142/9 146/13 147/13 147/14 153/8 153/20 155/13 155/22 155/22 156/1 156/11 156/11 156/16 157/19 157/21 158/2 158/3 159/8 161/18 166/8 166/12 169/9 172/14 173/23 174/13 176/25 178/7
vest [14] 190/12 190/12 190/13 190/14 258/2 271/21 271/21 271/22 276/4 289/17 289/23 291/3 291/8 303/6	ways [3] 196/18 230/22 287/9 we [173] 136/2 136/3 136/8 137/18 138/24 138/25 139/10 142/2 142/14 142/15 142/22 142/22 143/12 143/23 145/12 146/18 146/19 146/21 146/24 146/25 147/14 148/24 148/25 149/2 149/3 149/6 149/7 149/15 149/21 150/22 152/15 152/21 153/22 153/22 155/17 155/22 157/5 159/16 159/16 159/18 161/20 161/23 163/21 163/23 165/7 165/11 165/12 165/12 165/13 165/13 165/13 166/5 167/2 168/21 173/2 173/22 176/19 177/10 177/18 181/11 181/12 181/12 181/15 183/2 184/22 185/5 185/16 185/25 186/1 186/1 189/1 190/8 190/16 192/16 201/6 202/8 204/20 205/4 205/16 207/25 209/8 209/12 209/12 209/15 209/21 209/21 209/22 209/23 218/22 218/22 219/5 220/14 220/21 225/17 232/6 236/8 236/10 236/13 237/18 239/25 240/4 241/1 245/13 247/16 247/18 248/6 248/24 248/25 250/9 253/14 254/10 256/7 256/24 257/20 258/25 263/4 263/15 264/19 264/20 265/8 266/2 266/3 266/25 267/8 267/13 267/22 272/22 272/23 277/2 277/10 277/20 277/20 278/18 280/17 280/17 280/19 280/20 281/10 283/14 284/15 284/16 284/17 284/19 284/20 284/24 285/8 285/10 285/11 285/11 285/21 286/13 287/15 287/17 288/16 288/16 288/17 288/20 290/7 296/11 297/17 298/5 298/9 298/18 298/19 299/1 299/12 299/21 300/15 300/16 300/18 300/20 300/21 308/3 we'll [27] 136/7 140/25 142/5 142/8 143/6 210/9 232/19 232/20 233/5 233/6 233/12 233/13 236/9 236/9 236/19 241/21 246/20 246/22 246/23 247/21 264/2 265/9 267/6 267/7 267/9 278/18 300/20 we're [46] 140/24 141/15 143/20 144/9 153/13 156/9 166/3 166/4 168/25 179/15 181/13 181/16 183/12 183/15 184/18 184/25 185/5 192/18 192/19 206/13 208/6 212/9	
view [8] 137/11 138/23 139/1 265/19 265/21 266/10 266/13 267/16 viewing [1] 239/10 violation [2] 219/22 235/17 violence [1] 152/14 Virginia [1] 198/9 visible [1] 203/16 voice [1] 160/6 voir [1] 200/12 voluntary [1] 244/25		
W		
wagon [7] 147/2 147/4 147/5 147/6 147/8 147/14 147/18 waist [8] 156/17 289/25 290/2 290/4 293/4 293/17 293/24 303/21 waistband [7] 206/5 206/6 272/5 273/13 277/4 278/11 288/24 wait [3] 142/8 180/10 180/10 waiting [3] 143/12 144/9 267/12 walk [2] 270/17 297/13 walked [3] 208/13 303/1 305/20 walking [4] 153/8 153/9 153/12 182/19 WALTER [1] 135/17 want [21] 138/8 142/21 149/4 166/7 169/1 189/16 213/17 227/22 230/19 232/3 237/14 241/25 245/4 270/13 270/14 275/12 279/11 279/23 300/15 300/16 300/18 wanted [12] 149/7 149/9 154/5 154/6 163/18 163/20 194/23 217/10 244/9 244/12 266/22 302/20 wants [4] 236/14 270/12 275/21 276/20 ward [1] 285/1 warning [1] 151/3 was [427] wash [1] 287/1 washing [1] 287/2 Washington [1] 239/6 wasn't [35] 155/11 159/8 161/23 162/15 162/17 175/8 176/11 176/12 176/15 177/8 177/9 177/10 185/20 187/5 187/6 222/25 226/18 273/8 274/6 274/7 274/17 274/18 279/9 286/25 287/2 290/6 291/15 297/14 298/15 302/11 305/24 305/24 305/25 307/3 307/4 watch [2] 165/5 281/16		

W	white-noise [1] 143/14	252/19 252/20 252/24 258/15
when... [78] 178/24 180/4	who [44] 144/11 153/4 153/14	258/21 281/22 283/11 283/18
181/4 183/7 186/20 187/11	153/17 155/14 166/13 167/16	298/7
191/24 192/13 192/16 192/24	174/24 180/4 185/22 189/4	witness's [1] 220/11
193/14 193/25 194/11 195/4	193/20 193/22 219/17 225/7	witnessed [1] 247/8
195/9 195/19 197/1 201/13	228/15 235/16 244/9 246/1	witnesses [15] 142/19 196/20
201/15 204/4 204/5 204/17	249/20 259/22 264/3 267/3	196/24 196/24 200/19 232/7
204/25 205/7 205/16 206/22	271/12 272/3 272/3 277/22	232/9 232/11 239/20 244/9
206/25 212/25 214/6 216/3	278/12 281/22 283/11 287/12	244/10 244/12 251/8 252/1
221/6 222/4 223/2 227/3	288/14 290/1 291/21 292/4	270/10
230/18 250/19 254/11 261/12	298/2 302/20 303/2 303/7	won [4] 185/19 185/22 185/23
266/3 266/3 270/4 274/16	303/9 303/9 303/17 305/7	185/25
274/19 276/6 277/3 277/10	305/9	won't [2] 254/10 265/9
277/13 283/2 284/17 285/23	who's [2] 284/21 303/25	wonder [1] 235/21
286/4 286/8 286/21 287/6	whole [10] 184/1 184/15	wondering [1] 197/2
287/15 288/16 289/4 289/16	231/3 273/7 287/5 288/13	word [4] 214/2 249/15 280/21
289/18 290/8 290/20 291/25	294/10 294/10 300/13 300/17	300/24
292/5 292/25 293/6 293/7	whom [1] 197/22	worded [3] 175/3 255/7 259/4
295/1 296/11 297/10 299/18	whose [1] 285/16	words [2] 189/1 300/5
301/11 301/12 302/24 303/18	why [34] 142/22 149/9 160/25	work [6] 152/13 152/15
305/8 306/14 307/11 307/25	168/20 178/21 194/18 197/2	152/17 169/6 286/25 295/23
where [57] 145/18 146/18	216/19 230/18 231/13 236/17	workday [1] 286/23
149/6 152/6 158/16 159/18	257/21 270/22 275/12 276/1	worked [5] 143/19 168/21
160/7 160/21 160/24 164/9	276/11 277/1 277/1 277/3	169/2 189/4 189/5
165/11 171/11 174/6 174/7	277/5 279/16 280/17 280/17	working [11] 139/13 168/25
176/21 178/2 178/15 179/12	280/22 283/8 284/15 284/17	169/2 181/20 187/6 187/7
179/15 180/1 193/22 199/10	298/10 303/9 305/6 305/7	197/24 198/1 217/24 270/20
202/20 202/22 203/5 203/6	305/9 306/23 307/5	286/5
205/11 205/21 208/6 209/6	Wilkens [9] 152/9 156/23	works [1] 197/2
211/2 211/3 212/13 219/19	191/24 271/10 271/11 272/8	worksheet [3] 218/18 218/20
222/16 223/15 225/24 225/25	293/12 302/20 304/12	219/2
226/16 238/25 245/13 264/23	will [66] 139/21 140/1	worksheets [2] 219/3 219/9
276/23 277/15 279/14 283/18	140/22 141/25 142/10 142/24	world [1] 280/19
283/20 288/7 289/2 291/21	143/16 180/25 201/14 201/15	worry [2] 140/23 235/23
296/15 296/18 298/5 305/4	201/18 201/19 202/22 203/5	worse [2] 294/10 294/10
305/9 305/12 307/16	203/7 203/14 205/6 207/18	worth [2] 241/7 297/6
whereas [1] 283/17	211/15 217/20 219/12 220/17	would [101] 138/15 138/16
whether [40] 137/25 139/15	220/22 234/15 234/16 234/19	140/20 141/14 142/21 145/15
144/15 160/5 172/11 175/17	234/25 235/8 236/3 236/4	146/17 148/23 149/5 150/9
179/4 179/23 180/11 183/9	236/10 238/7 242/18 242/24	154/14 157/4 157/10 159/25
183/25 184/1 184/14 184/14	245/17 250/4 250/22 250/22	161/12 167/5 168/15 170/12
184/15 184/16 186/20 200/5	251/1 251/11 254/10 254/23	171/2 171/5 171/6 171/7
204/10 209/18 211/4 226/14	254/25 255/5 255/25 257/16	171/7 171/11 175/13 182/22
243/5 254/5 256/23 257/22	259/25 262/24 263/1 263/1	183/2 183/8 183/13 184/9
258/7 270/1 270/15 276/2	264/3 265/9 266/1 266/2	184/10 189/2 190/10 196/1
279/6 284/18 284/22 291/2	266/4 266/8 277/12 280/8	197/9 198/3 199/15 201/16
291/8 291/8 291/9 293/2	281/10 285/4 285/7 300/21	201/17 201/20 202/4 202/8
296/3 303/3	300/25 300/25 308/2 308/5	202/13 204/2 204/20 205/2
which [52] 137/18 140/8	willing [1] 286/9	206/20 207/20 211/9 211/13
141/1 167/10 168/13 168/16	Wilson [1] 239/15	211/23 211/25 212/9 212/11
171/23 172/2 174/4 174/12	wind [1] 220/2	213/14 214/18 217/1 221/22
179/25 183/19 201/20 202/17	window [1] 277/15	229/10 229/22 229/23 231/1
202/19 202/22 203/4 203/4	wipe [4] 204/24 204/25	237/18 237/22 238/3 238/16
203/13 203/15 205/9 208/14	205/22 206/1	239/6 239/9 242/17 243/5
208/15 209/1 212/5 216/8	wiping [1] 204/22	243/5 244/14 246/9 258/11
217/2 218/9 218/9 222/9	wit [1] 259/18	265/4 267/5 273/8 277/1
222/12 223/11 237/21 239/5	withdraw [3] 216/20 217/15	277/1 279/5 283/13 284/13
240/6 240/9 249/25 253/21	230/7	286/16 288/17 290/17 290/20
254/1 254/17 254/22 256/10	within [12] 136/15 137/18	292/4 293/6 294/21 295/1
259/21 262/13 272/5 282/7	170/10 203/9 227/10 238/20	295/6 295/6 295/10 295/13
283/11 285/7 285/15 291/19	239/5 273/18 273/21 274/14	295/14 295/17 296/22 297/10
294/3 299/16	280/5 308/12	301/15 304/8 306/23
while [12] 136/24 140/7	without [4] 162/21 163/3	wouldn't [10] 141/18 162/21
144/9 158/24 165/6 171/9	179/18 188/25	163/1 163/2 164/9 164/23
277/2 285/21 292/11 293/19	witness [35] 142/5 142/15	166/5 212/15 220/7 290/21
298/3 298/12	143/21 144/10 145/5 145/6	wrestle [1] 273/19
whirl [1] 202/19	178/4 178/25 184/19 190/9	wrestles [1] 278/6
white [9] 143/14 180/3 180/4	196/14 196/16 197/1 197/4	write [5] 147/1 147/20
201/19 223/11 230/11 287/4	197/8 208/4 227/17 228/15	148/20 177/1 191/21
291/23 291/25	231/25 232/2 233/15 239/20	writes [1] 217/10
	242/21 251/9 252/2 252/16	writing [4] 149/17 169/16

W	you've [25] 142/25 145/15 145/24 151/19 177/20 191/8 191/13 198/24 243/7 243/18 243/25 244/19 255/18 256/1 266/21 270/9 281/4 286/2 295/8 295/12 302/17 307/22 308/1 308/4 308/4	
writing... [2] 177/19 191/4	your [276]	
written [9] 146/14 167/17 168/17 170/9 174/11 191/11 191/11 191/13 299/14	yourself [5] 170/2 187/8 197/9 276/11 307/23	
wrong [5] 208/7 231/13 284/20 302/15 302/15	Z	
wrongdoing [1] 180/5	zero [1] 168/9	
wrote [10] 147/8 149/21 167/24 175/8 175/11 211/3 214/20 214/25 218/11 299/18		
Wycoff [2] 135/24 308/14		
X		
Xerox [1] 202/1		
Y		
yeah [5] 155/9 163/4 189/14 233/4 272/11		
year [31] 140/9 140/11 140/15 140/16 141/2 141/10 141/12 141/24 151/23 170/7 198/6 224/18 235/5 259/13 259/18 259/24 260/6 260/7 260/14 261/8 264/6 264/13 265/12 268/6 268/16 268/25 286/3 286/4 290/24 302/3 302/5		
years [21] 136/23 145/17 145/18 145/22 146/1 146/10 146/13 148/21 150/7 151/19 151/23 169/15 174/20 177/16 178/11 191/6 191/13 198/1 198/2 200/1 299/4		
yelling [2] 159/5 290/22		
yes [182]		
yesterday [20] 139/12 142/4 144/10 145/12 152/8 156/1 156/16 157/7 160/4 162/19 164/23 240/7 240/11 250/13 263/20 267/8 270/4 278/2 289/16 289/20		
yet [2] 142/6 157/25		
you [826]		
you come [1] 233/7		
you'd [2] 165/19 304/8		
you'll [13] 145/2 197/7 201/3 236/5 237/9 241/24 246/5 247/20 247/25 248/13 277/10 277/11 277/12		
you're [75] 137/14 138/7 142/5 145/3 147/10 154/8 155/9 157/2 157/19 158/11 158/16 159/2 165/15 170/6 170/11 173/19 174/19 174/22 176/14 176/25 179/16 184/19 185/2 187/7 189/11 189/15 196/13 205/1 206/4 212/25 213/11 213/12 213/20 213/20 214/6 214/6 214/9 214/16 220/9 224/20 224/21 227/22 227/23 227/25 228/24 231/22 231/25 237/2 237/8 243/23 244/18 247/17 247/20 248/2 258/3 258/7 266/7 269/2 275/7 276/6 277/16 277/17 284/10 285/10 292/5 293/18 293/18 293/19 293/20 293/20 294/15 295/9 297/23 300/3 301/4		